

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
	)	2020-CL-001-SAL
MONTEREY MUSHROOMS, LLC,	)	2019-CE-044-SAL
	)	2019-CE-045-SAL
Respondents,	)	2019-CE-047-SAL
	)	2020-CE-002-SAL
and	)	2022-CE-040-SAL
	)	2022-CL-003-SAL
JOSE FLORES, JOEL TAPIA,	)	
TERESITA AVILA, HORACIO	)	ORDER DENYING RESPONDENT
RAMIREZ, JOSE LUIS SANCHEZ,	)	UNITED FARM WORKERS OF
and KARINA HERNANDEZ	)	AMERICA’S REQUEST FOR SPECIAL
BONILLA,	)	PERMISSION TO APPEAL
	)	ADMINISTRATIVE LAW JUDGE’S
Charging Parties.	)	ORDER RE: MOTION TO DISMISS
	)	AND MOTION TO STRIKE
	)	
	)	Administrative Order No. 2024-21-P
	)	(June 18, 2024)
	)	

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On May 20, 2024, respondent United Farm Workers of America (UFW) filed with the Board a request for special permission to appeal an order issued by the administrative law judge (ALJ) denying the UFW’s “Motion to Dismiss for Failure to State a Claim, or Alternatively, to Strike and Demand Disclosure of Discriminatee Names in First Amended Complaint.” For the reasons discussed below, we deny the request.

## **PROCEDURAL BACKGROUND**

The First Amended Complaint (complaint) in this case against UFW and Monterey Mushrooms, LLC was filed on February 20, 2024. The complaint alleges that the UFW discriminatorily applied its dispatch processes and hiring hall operations, retaliating against individuals who had supported a prior decertification effort. The complaint contains allegations involving unnamed discriminatees in addition to the six charging parties.

On March 8, 2024, the UFW filed a “Motion to Dismiss for Failure to State a Claim, or Alternatively, to Strike and Demand Disclosure of Discriminatee Names in First Amended Complaint.” The UFW sought dismissal of the complaint for failing to adequately state claims upon which relief can be granted because it omits the names of alleged discriminatees. The UFW argued that this omission infringes upon UFW’s due process rights by obstructing its ability to conduct a thorough investigation into whether these individuals complied with the established hiring hall procedures.

On May 14, 2024, the ALJ issued an order denying the UFW’s motion. With respect to the motion to dismiss, the ALJ reasoned that the allegations in the complaint, while generalized regarding the identities of certain discriminatees, still offered sufficient framework to meet the legal standards necessary at the preliminary stage of proceedings. Moreover, Board regulations protect the pretrial disclosure of identities and statements of witnesses who are agricultural laborers.<sup>1</sup> (*Giumarra*

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

*Vineyards Corp.* (1977) 3 ARLB No. 21, p. 3.) Similarly, the ALJ denied the UFW’s alternative motion to strike and demand disclosure of discriminatee names because she concluded that the challenged elements of the complaint are neither irrelevant nor improper, citing Code of Civil Procedure section 436, subdivision (a) and *Ferraro v. Camarlinghi* (2008) 161 Cal.App.4th 509, 528.

### **DISCUSSION**

We note at the outset that the UFW’s motion does not include supporting documents for the Board to review in making its ruling. As the Board recently stated, “[t]he UFW, and all parties, are cautioned to include with applications under regulation 20242, subdivision (b), all evidence and materials they deem relevant to their application.” (*Wonderful Nurseries, LLC* (May 24, 2024) ALRB Admin. Order No. 2024-18-P, p. 2, fn. 4; see also *Wonderful Nurseries, LLC* (May 24, 2024) ALRB Admin. Order No. 2024-17, p. 3, fn. 4; *Tri-Fanucchi Farms* (Mar. 27, 2023) ALRB Admin. Order No. 2023-01, p. 2, fn. 2.) While we deny the UFW’s current application because it does not meet the standard for interlocutory review, in the future the Board will consider denying applications for special permission for an interim appeal that do not include all documents necessary for the Board to rule on such applications.<sup>2</sup>

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<sup>2</sup> In light of the repeated failure to include critical evidence in support of these filings we designate this order as precedential pursuant to Board regulation 20287 due to the importance of this issue.

The UFW argues the application for special permission to appeal meets the standard for interim relief set forth in Board regulation 20242, subdivision (b) because there is a significant risk that UFW will not be able to effectively defend itself without access to the names and detailed information of the discriminates. Specifically, the UFW seeks detailed information about each discriminatee's interaction with the hiring hall to determine whether they followed the rules. Without the names and relevant details of the alleged discriminates, the UFW argues that it is deprived of the ability to conduct a thorough investigation into these claims. This includes verifying the signing of hiring hall lists, adherence to call-in procedures, and the general application of hiring rules. The UFW also asserts a crucial aspect of its defense is whether discriminatees made any effort to mitigate their damages by actively seeking employment through the hiring hall or elsewhere.

Under Board regulation 20242, subdivision (b), interlocutory appeals are not allowed except upon special permission from the Board. The Board's standard provides for interim review of ALJ orders only where the issue is "effectively unreviewable" on exceptions. (*Premiere Raspberries, LLC* (2012) 38 ALRB No. 11, p. 11.) In other words, 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*, *supra*, 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 UFW has not shown that the ALJ’s order denying its motion is appropriate for interlocutory review. Rather, the relief sought by the UFW is a matter that can be effectively addressed through the filing of exceptions. (See *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]; *Eat Sweet Farms, LLC* (April 27, 2020) ALRB Admin. Order No. 2020-10 [denying application to appeal ALJ order denying motion to dismiss complaint because relief respondent sought would still be available at the exceptions stage].) The UFW will be able to raise its defenses including compliance with hiring hall rules and mitigation of damages at the hearing, in its post-hearing brief, and in its exceptions. The UFW will have the opportunity to cross-examine witnesses, object to witness testimony, and inspect and object to evidentiary documents at hearing.

With respect to any unnamed discriminatees who may testify at the hearing, the UFW’s argument is akin to arguments raised in previous cases by respondents who argue that they are prevented from preparing adequate defenses in ALRB proceedings. The Board has repeatedly declined to revisit the well-settled rule set forth in *Giumarra Vineyards Corp., supra*, 3 ALRB No. 21 and codified in Board regulations 20236 and 20274. (*P&M Vanderpoel Dairy* (2014) 40 ALRB No. 8., p. 24.)

**ORDER**

PLEASE TAKE NOTICE that respondent United Farm Workers of America's request for special permission to appeal is DENIED.

IT IS SO ORDERED.

DATED: June 18, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member