

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,)	Case No. 2024-RM-002
)	
Petitioner Labor Organization,)	
)	ORDER DENYING APPEAL OF
and)	EXCLUSION ORDER
)	
WONDERFUL NURSERIES, LLC,)	Admin. Order No. 2025-01
)	
Employer.)	(April 7, 2025)
_____)	

On March 21, 2025, Investigative Hearing Examiner Miles E. Locker (the IHE) issued a statement of facts pursuant to Board regulation 20262, subdivision (e) concerning his order of that day imposing a two day exclusion from the hearing in this matter on attorney Mario Martinez, counsel for the United Farm Workers of America (UFW) in this majority support petition (MSP) matter involving the UFW and Wonderful Nurseries, LLC (Wonderful). The UFW filed an appeal of the exclusion order with the Agricultural Labor Relations Board (ALRB or Board). Wonderful did not file a response. The UFW’s appeal is DENIED.

Background

The hearing in this matter involves Wonderful’s objections to the certification of the UFW issued pursuant to the MSP process. The hearing has been an extraordinarily lengthy one, with March 21, 2025 being the fifty-fourth hearing day.¹ The events that occurred on that day are largely undisputed and are set forth in the IHE’s

¹ All dates are in 2025 unless otherwise noted.

statement of facts. Those facts will not be set forth in detail here, but, in sum, Martinez, while on the record, stated that Wonderful's attorney, Ronald Barsamian, was a "fatso" who should "go to hell." The IHE noted that he had repeatedly admonished both Martinez and Barsamian against directing offensive language and personal insults towards opposing counsel while on the record and both attorneys had previously promised to abide by these ground rules. The IHE, concluding that further admonishment was insufficient to control the conduct of the hearing, ordered that Martinez would be excluded from the hearing for two hearing days. The IHE issued the statement of facts as required by Board regulation 20262, subdivision (e) that afternoon.

The exclusion order issued on Friday, March 21. Under the IHE's order, the exclusion would be implemented on the next two hearing days, which were scheduled for the following Monday and Tuesday (March 24 and 25). The UFW filed its appeal after 5:00 on March 21, meaning that the appeal was deemed filed on Monday, March 24. (Board reg. 20169, subd. (a)(2).) Although the UFW requested a ruling on the appeal prior to the resumption of the hearing on March 24, the Board's open meeting and public notice obligations under the Bagley-Keene Open Meeting Act (Gov. Code, § 11120 et seq.) did not permit the Board to meet within the requested time. (See Gov. Code, § 11125, subd. (a).) However, on March 24, the IHE issued an order canceling the March 24 and 25 hearing days and staying imposition of the exclusion order until April 10 and 11, which are the next scheduled hearing days. This was done in order to allow the UFW's appeal to be heard prior to the exclusion order being carried out.

Discussion

UFW argues it is “questionable” that the Board’s regulations authorize the exclusion of counsel from ALRB proceedings. In fact, the regulations do authorize such exclusions. Board regulation 20262, subdivision (e) gives IHEs the authority to “regulate the course of the hearing, including the power, consistent with section 20800 to exclude from the hearing any person who engaged in disruptive or abusive conduct.” The power to exclude “any person” is facially broad enough to include counsel. Furthermore, Board regulation 20800 is incorporated by reference and subdivision (a) of that regulation specifically authorizes “summary exclusion” of counsel who engage in “disruptive or abusive conduct with respect to . . . any hearings convened pursuant to the authority conferred upon this Board.”

The UFW argues that the Board’s 1999 repeal of former Board regulation 20270, which dealt with contempt citations and removal of attorneys, reflected that the Board intended to eliminate the ability of hearing officers to order removal of attorneys. Such an interpretation is contradicted by the existing language of the remaining regulations. Furthermore, review of the regulatory record shows the intent behind the elimination of former regulation 20270 was that it be eliminated as superfluous due to the contemporaneous addition to Board regulation 20262 of the language that currently appears there referencing Board regulation 20800.²

The UFW argues that the IHE erred by making a finding of “abuse” and

² Notice Publication/Regulation Submission, Final Statement of Reasons, p. 23, Dec. 2, 1998.

ordering exclusion based thereupon. The UFW contends that the statement in question was intended as a joke, that Martinez and Barsamian have a history of joking with each other, and that Martinez apologized twice on the record for the conduct in question. We find that the IHE did not abuse his discretion in finding that Martinez' conduct constituted abuse and ordering exclusion, which is authorized by the Board's regulations as a consequence for such conduct. Initially, the IHE, who observed the situation as it occurred, was better positioned than is the Board to evaluate the conduct and determine whether it was abusive. It is appropriate to give deference to the "judicial actor better positioned than another to decide the issue in question," as such deference gives the judge "the necessary flexibility to resolve questions involving multifarious, fleeting, special, narrow facts that utterly resist generalization" and enhances the ability of the judges "on the front lines of litigation . . . to control the litigants before them." (*Cooter & Gell v. Hartmarx Corp.* (1990) 496 U.S. 384, 403-404 (internal punctuation omitted); *Aloe Vera of America, Inc. v. United States* (9th Cir. 2004) 376 F.3d 960, 965 [judge's determination sanctions are warranted is "given great deference" by a reviewing court].)

We find no abuse of discretion in the IHE's conclusions that Martinez' conduct was abusive and that exclusion was warranted to preserve order and an atmosphere of respect in the hearing room. While some allowance must be made for emotions to run high and for expressions of frustration over the course of a hearing, we do not believe that the Board must or should permit blatant ad hominem attacks against those who participate in the Board's processes, including, but certainly not limited to, counsel. Comments such as the one made in this case degrading an individual based on

physical appearance or characteristics are unacceptable in the Board's proceedings, and the Board would find abuse established in this case based upon that statement alone. Such conduct is not only inconsistent with proper decorum and respect for individuals in the Board's proceedings, it degrades and disrupts the truth-seeking function of the Board's hearings. Indeed, permitting an atmosphere of personal attacks and abuse in the Board's proceedings may even discourage full participation in the Board's processes, particularly among those who may already find such processes intimidating and stressful.

The UFW argues that it may not be deprived of representation by its chosen counsel. The Board recognizes the right to counsel in its regulations. (Board Reg. 20370, subd. (b) ["Any party shall have the right to participate in such investigative hearing in person, by counsel, or by other representative . . .".]) Given the importance of the right to counsel, exclusion of counsel from hearings should not be ordered lightly. However, the right to chosen counsel is not absolute and does not give counsel license to act with impunity in the ALRB's proceedings. The Board notes that, in this case, there are several factors that mitigate the due process concerns raised by the UFW. First, the order is limited in duration. It does not bar Martinez from the remainder of the hearing but only for two hearing days out of a much lengthier hearing. Martinez may resume representing the UFW in the hearing after the exclusion period and may continue advising the UFW outside the hearing. Second, Martinez' firm has other attorneys, including an attorney who has been present for most of this hearing and another attorney who has been handling other matters. Third, due to the IHE ordering a continuance, by the time the hearing resumes, the UFW will have had twenty days to prepare alternative

representation for the exclusion period. Finally, the continuance of the hearing permitted the immediate appeal provided for by the Board's regulations to be heard.³

ORDER

PLEASE TAKE NOTICE that the UFW's appeal of the IHE's exclusion order is DENIED.

IT IS SO ORDERED.

DATED: April 7, 2025

VICTORIA HASSID, Chair

ISADORE HALL, III, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member

³ The IHE acted appropriately by continuing the hearing once it became apparent that the UFW's appeal could not be heard before the exclusion was to be carried out, which threatened to deprive the UFW of a meaningful appeal. The Board's hearing officers have the discretion to structure exclusion orders impacting counsel so as to accomplish their corrective aims while maintaining the efficiency of the ALRB's hearings and preserving the due process rights of the parties. In some cases, it may be appropriate for the hearing officer to allow the hearing to go forward pending appeal of an exclusion order and implement the exclusion once the appeal is exhausted. In other cases where immediate exclusion of counsel is deemed necessary, the hearing officer must order a continuance of the hearing, as occurred here, to preserve the right to a meaningful appeal. A continuance may also be appropriate to afford the party adequate time to prepare alternative counsel.