

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF AMERICA,
Petitioner Labor Organization,
and
WONDERFUL NURSERIES, LLC,
Employer.

Case No. **2024-RM-002**

ORDER DENYING MARIA ESTER GUTIERREZ’ APPLICATION FOR SPECIAL PERMISSION TO APPEAL INTERIM ORDER OF INVESTIGATIVE HEARING EXAMINER DENYING IN PART PETITION TO REVOKE SUBPOENA

Admin. Order No. 2025-04-P

(May 23, 2025)

On April 23, 2025, Maria Ester Gutierrez filed with the Agricultural Labor Relations Board (ALRB or Board) an application for special permission to appeal an interim order issued by Investigative Hearing Examiner Miles Locker (IHE) denying in part Gutierrez’ petition to revoke a subpoena duces tecum served upon her by the United Farm Workers of America (UFW) in this majority support petition (MSP) case involving the UFW and Wonderful Nurseries, LLC (Wonderful).¹ Because applications for special permission to appeal may not be filed by non-parties, the Board denies Gutierrez’ application.

Background

Gutierrez is an individual who, at the time of the filing of the MSP, was an

¹ All subsequent dates are in 2025 unless otherwise indicated.

agricultural employee employed by Wonderful. Gutierrez previously moved to intervene in the MSP case as a party but that motion was denied as Gutierrez was not entitled to party status.² (*Wonderful Nurseries, LLC* (May 6, 2024) ALRB Admin. Order No. 2024-12.) Gutierrez has appeared as a witness in the hearing. She is represented in this matter by W. James Young of the National Right to Work Legal Defense Foundation.

On March 24, the UFW served Gutierrez with a subpoena duces tecum seeking certain documents from her. On March 28, Gutierrez filed a petition to revoke the subpoena with the IHE, raising various objections to the subpoena. On April 16, the IHE issued an interim order granting the petition to revoke in part, denying it in part, and deferring ruling on certain privilege objections pending the filing of a privilege log by Gutierrez. On April 23, Gutierrez filed with the Board an application for special permission to appeal the IHE's interim order. The UFW filed an opposition to the application, arguing, among other things, that Board regulation 20242³ does not permit applications for special permission to appeal to be filed by non-parties.

Discussion

The Board agrees Board regulation 20242, by its own terms, limits the right to file applications for special permission to appeal to parties. The regulation repeatedly

² The Board considered but denied the application for special permission to appeal filed by Gutierrez and other individuals. An appeal under Board regulation 20242 is allowed under such circumstances as the appellants were contesting their entitlement to party status. (See Board reg. 20130 [parties include those “seeking and entitled as of right to be admitted as a party”].)

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

and exclusively refers to parties when describing the special appeal process. Thus, the regulation states “[a] party” applying for special permission to appeal must file the application within five days, “[a]ny party” may file a response served on “the other parties” and “[p]arties” filing appeals of oral rulings must notify the executive secretary and file the hearing transcript. (Board reg. 20242, subd. (b)-(c).) The Board’s regulations define a “party” as “any person named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any Board proceeding.” (Board reg. 20130.) This includes, *inter alia*, “any person filing a charge or petition under the Act, any person named as respondent, as employer, or as party to a contract in any proceeding under the Act, and any labor organization alleged to be dominated, assisted, or supported in violation of Labor Code Section 1153(a) or (b) ...” (*Ibid.*) This definition would not include Gutierrez in the instant proceeding. (See *Wonderful Nurseries*, supra, ALRB Admin. Order No. 2024-12.)

Additionally, under the legal standard set forth in the regulation, the Board will hear appeals only where an issue “cannot be addressed effectively through exceptions.” The reference to the filing of exceptions, an action only a party may take, further confirms the special appeal process is limited to parties. (See Board reg. 20282, subd (a) [“any party may file ... exceptions to the decision” of the ALJ]; 20370, subd. (j) [“a party may file ... exceptions” to the IHE’s decision].)

Accordingly, because Gutierrez is not a party, the Board concludes she is not permitted to apply for special permission to appeal the IHE’s order pursuant to the

Board's regulations. Her application is denied on that basis.⁴

ORDER

PLEASE TAKE NOTICE that Maria Ester Gutierrez' application for special permission to appeal the interim order of the IHE is DENIED.

IT IS SO ORDERED.

DATED: May 23, 2025

VICTORIA HASSID, Chair

ISADORE HALL, III, Member

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member

⁴ In order to provide guidance to future litigants, the Board designates this order as precedential.