

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

<b>In the Matter of:</b>	)	Case Nos.: 00-CE-5-SAL
	)	01-CE-16-SAL
D'ARRIGO BROS. CO. OF	)	02-CE-14-SAL
CALIFORNIA,	)	04-CE-18-SAL
	)	04-CE-18-1-SAL
<b>Respondent,</b>	)	
<b>and</b>	)	<b>ORDER REFERRING TO ALJ</b>
	)	<b>RESPONDENT'S APPLICATION FOR</b>
	)	<b>ENFORCEMENT OF SUBPOENAS</b>
	)	<b>DUCES TECUM</b>
UNITED FARM WORKERS OF	)	
AMERICA, AFL-CIO,	)	<b>Admin. Order 2004-7</b>
	)	
<b>Charging Party.</b>	)	
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On August 2, 2004, D'Arrigo Bros. Co. of California (Respondent or Employer) filed an application pursuant to Section 1151 (b) of the Agricultural Labor Relations Act, and section 20250(k) of the Board's regulations <sup>1</sup> asking the Board to apply to an appropriate superior court for enforcement of the Respondent's subpoenas duces tecum (subpoenas) served by the Respondent on the General Counsel of the Agricultural Labor Relations Board and on the United Farm Workers of America, AFL-CIO (UFW or Charging Party) on April 28, 2004.

Section 20250 (k) of the Board's regulations states that "upon the failure of any person to comply with a subpoena or notice, the Board may apply to the appropriate superior court for an order requiring that person to appear and produce evidence regarding the matter in question."

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<sup>1</sup> The Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act is found at California Labor Code section 1140 *et seq.* The Board's regulations are codified at California Code of Regulations, Title 8 section 20100 *et seq.*

After reviewing the Respondent's application for enforcement, and the oppositions filed by the UFW and the General Counsel, the Board finds that it cannot make a determination, based on the papers alone, as to whether there was non-compliance with the Respondent's subpoenas.<sup>2</sup> For this reason, it is ORDERED that the Administrative Law Judge (ALJ) in the above matter conduct a hearing, on a date to be determined by the ALJ, for the purpose of evaluating whether the Respondent's application for enforcement is appropriate.<sup>3</sup> The Respondent's application for enforcement and the oppositions filed by the UFW and the General Counsel will be forwarded to the ALJ.

IT IS FURTHER ORDERED that at the conclusion of the hearing, the ALJ recommend to the Board whether or not the Board should seek enforcement of the Respondent's subpoenas in the appropriate superior court. The Board requests that the ALJ issue her recommendation on or before September 9, 2004. No filings from the parties regarding the ALJ's recommendation shall be permitted.

By Direction of the Board

Dated: August 30, 2004

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JOSEPH A. WENDER JR.  
Acting Executive Secretary, ALRB

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<sup>2</sup> On August 16, 2004, the Board granted a request for an order authorizing enforcement of a notice in lieu of subpoena filed by the UFW in this case. The Board granted that request because on the face of the documents filed by the parties it was undisputed that there was non-compliance with at least some of the items in the notice in lieu of subpoena. The Board finds here, unlike in the previous situation, that it does not have adequate information to determine whether or not there was non-compliance with the Respondent's subpoenas.

<sup>3</sup> At the discretion of the ALJ, the hearing may be by teleconference.