

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

In the Matter of:)	
)	Case No. 93-CE-38-VIS
SAN JOAQUIN TOMATO GROWERS,)	(20 ALRB No. 13)
INC.,)	
A California Corporation,)	
)	Admin. Order No. 2010-15
Respondent,)	
)	ORDER GRANTING
and)	WITHDRAWAL OF
)	MOTION TO CLOSE
UNITED FARM WORKERS OF)	CASE AND ORDER
AMERICA,)	CANCELING HEARING
)	
Charging Party.)	
_____)	

On May 15, 2009, the Regional Director of the Visalia Regional Office filed a motion to close the above-captioned case without full compliance. On June 19, 2009, the Charging Party, United Farm Workers of America (UFW) filed an opposition to the motion to close. Respondent, San Joaquin Tomato Growers, Inc. (SJTG or Employer) filed a response to the UFW's opposition on June 30, 2009.

On February 4, 2010, the Board issued Administrative Order 2010-03 in which it granted the Regional Director's motion to close the case. On February 12, 2010, the UFW filed a motion for reconsideration of the Board's order closing the case. On March 4, 2010, the Board denied the UFW's motion for reconsideration because the moving party failed to demonstrate extraordinary circumstances that would warrant reconsideration. However, in the same March 4, 2010 order, the Board granted

reconsideration and reopening of the record *sua sponte* in order to hold a hearing to make factual findings on laches, unclean hands, and any equitable defenses to enforcement and compliance with the Board's order in this matter. Such hearing was scheduled to begin July 20, 2010.

On July 1, 2010, UFW informed the Board that on June 23, 2010, it had produced to both counsel for Respondent and to the ALRB's Visalia Regional Office copies of complete payroll records for San Joaquin Tomato Growers, Inc. (Employer) for the calendar years 1991, 1992, 1993 and 1994. The UFW argues that these records provide information that would make it possible for the ALRB's Regional Director to calculate an initial makewhole specification in the above-captioned case. Therefore, the UFW requested that the Board dismiss the motion to close filed by the Regional Director in the above-captioned case on May 15, 2009. The UFW also requested that the Board cancel the hearing in that matter currently scheduled for July 20, 2010.

On July 9, 2010, at the request of the Board, the Employer submitted a response to the UFW's request to dismiss the motion to close the case and cancel the hearing. The Employer argues that the documents that the UFW purports to be San Joaquin Tomato Growers payroll records have not been authenticated, and moreover do not show pay rates, hours worked, job classifications or the employer at which this income was earned. The Employer's position is that the request to dismiss the motion to close should be denied and the July 20, 2010 hearing should proceed.

On July 8, 2010, the General Counsel submitted a response to the UFW's request to dismiss the motion to close the case. The General Counsel's position is that

“in light of the UFW’s discovery of payroll records for LCL Farms, Inc., SJTG’s farm labor contractor for the years 1991, 1992, 1993 and 1994... the General Counsel does not oppose the UFW’s request to dismiss the motion to close and cancel the July 20, 2010 hearing in regard to Respondent.”

At this juncture, the Board is not in a position to evaluate the authenticity or usefulness of the records discovered by the UFW. However, by not opposing the UFW’s request, the General Counsel has signaled the desire to reevaluate its motion to close. Accordingly, the Board will consider the General Counsel’s response as a request to withdraw its May 15, 2009 motion to close pending the General Counsel’s evaluation of the effect of the of the newly discovered payroll records on compliance efforts in this case. On that basis, the withdrawal of the May 15, 2009 motion to close is GRANTED without prejudice. IT IS ORDERED THAT the hearing previously scheduled for July 20, 2010 is cancelled as to SJTG.

By Direction of the Board

Dated: July 13, 2010

J. ANTONIO BARBOSA
Executive Secretary, ALRB