

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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|------------------------|---|--------------------------|-----------------|
| ACE TOMATO COMPANY, |) | Case No. | 93-CE-37-VI |
| INC., |) | | (20 ALRB No. 7) |
| |) | | |
| Respondent, |) | | |
| |) | | |
| and |) | | |
| |) | ORDER GRANTING LEAVE TO | |
| UNITED FARM WORKERS OF |) | SEEK COURT ORDER | |
| AMERICA, |) | REQUIRING COMPLIANCE | |
| |) | WITH INVESTIGATIVE | |
| Charging Party. |) | SUBPOENA | |
| |) | | |
| |) | Admin. Order No. 2012-18 | |
| |) | | |

On October 1, 2012, pursuant to Title 8, California Code of Regulations, section 20217, subdivision (g), the General Counsel of the Agricultural Labor Relations Board (Board) filed in the above-referenced case a Request For Leave To Seek Court Order Requiring Compliance With Investigative Subpoena. The request relates to a subpoena served on Respondent Ace Tomato Company, Inc. (Ace) on September 7, 2012.¹ The General Counsel alleges that Ace has failed to provide any records sought by the subpoena and has failed to file a petition to revoke pursuant to subdivision (d) of section 20217. The General Counsel further requests that she be delegated the authority

¹ The September 7, 2012 subpoena and the Request For Leave To Seek Court Order Requiring Compliance With Investigative Subpoena also relate to two other cases, 2012-CE-007-VI and 2012-CE-024-VIS. Those cases are addressed in separate orders issuing simultaneously with this Order.

to seek court enforcement in this instance in lieu of the Board initiating its own court proceeding.

Title 8, California Code of Regulations, section 20217, subdivision (b) requires that investigative subpoenas seek materials that are relevant to the subject matter of the investigation or reasonably calculated to lead to the discovery of admissible evidence. The Board has reviewed the subpoena and finds that it seeks materials consistent with the standard set forth in subdivision (b). Subdivision (d) of section 20217 provides that a petition to revoke an investigative subpoena be filed within five days after service of the subpoena.

On October 3, 2012, Ace filed with the Board an untimely petition to revoke the September 7, 2012 subpoena. Ace contends that Title 8, California Code of Regulations, section 20250, subdivision (f) requires service only on the party issuing the subpoena, presumably because a complaint has not yet issued. Ace also requests that the Board disregard any potential error in connection with the late filing.

Section 20250 applies only after a complaint has issued and, in any event, clearly requires filing with the Executive Secretary (or with the assigned administrative law judge if filed at or after the prehearing conference). The regulation applicable to investigative subpoenas and, thus, applicable here, is section 20217. That regulation also clearly requires filing with the Executive Secretary. In light of the clear regulatory requirements and the amount of time that has elapsed since service of the subpoena, the Board finds no basis for accepting the untimely filing.

PLEASE TAKE NOTICE that the Request For Leave To Seek Court Order Requiring Compliance With Investigative Subpoena is hereby GRANTED.

PLEASE TAKE FURTHER NOTICE that in this matter the General Counsel is delegated the authority on behalf of the Board to initiate the necessary court proceedings.

By Direction of the Board.

Dated: October 4, 2012

J. ANTONIO BARBOSA
Executive Secretary, ALRB