

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BUD ANTLE, INC.,	)	Case No. 2012-CE-007-SAL
)	
Respondent,	)	ORDER GRANTING GENERAL
	)	COUNSEL'S REQUEST FOR
and	)	PERMISSION TO APPEAL ORDER
	)	OF ADMINISTRATIVE LAW
TEAMSTERS UNION, LOCAL	)	JUDGE; ORDER AFFIRMING
890, INTERNATIONAL	)	ADMINISTRATIVE LAW JUDGE'S
BROTHERHOOD OF	)	ORDER DENYING MOTION FOR
TEAMSTERS,	)	DEFAULT JUDGMENT
)	
<u>Charging Party.</u>	)	Admin. Order No. 2013-04

On November 20, 2012, the General Counsel served an unfair labor practice complaint in the above-captioned case on Bud Antle, Inc. (Respondent). Under sections 20230 and 20170 subsection (b) of the Board's regulations, the due date for the Respondent to file its Answer to the Complaint was December 3, 2012.¹ The Respondent filed its Answer to the Complaint on December 5, 2012. The Respondent initially filed the Answer on the Visalia Regional Office, the Sacramento Office of the General Counsel, and the Union and not on the Executive Secretary as required by regulation section 20234. The Respondent filed its Answer with the Executive Secretary's office on December 12, 2012.

¹ The Board's regulations are codified at Title 8, California Code of Regulations, section 20100, et seq.

On December 17, 2012, the General Counsel filed with the Administrative Law Judge (ALJ) a Motion to Make Allegations in the Complaint True and for a Default Judgment. On December 27, 2012, the Respondent filed an Opposition to the General Counsel's Motion.

On January 2, 2013, the ALJ issued an Order Denying General Counsel's Motion to Deem Allegations as True and for A Default Judgment. The ALJ admonished Respondent's counsel for not familiarizing himself with the ALRB's statute and regulations; however, the ALJ found the filing of the document two days late constituted excusable neglect which did not result in any prejudice to the other parties. Thus he denied the General Counsel's motion.

On January 9, 2013, the General Counsel filed with the Board a Request for Special Permission to Appeal the Administrative Law Judge's Order Denying Motion for Default Judgment. The Executive Secretary then issued an Order Setting a Due Date for Filing Responses to the General Counsel's Request. The due date given in the order was January 18, 2013 by close of business. No responses were received.

The Board has held that it will only hear interim appeals of interlocutory rulings that cannot be addressed effectively through exceptions filed pursuant to section 20282 or 20370 subsection (j) of the Board's regulations. *Premiere Raspberries, LLC, dba Dutra Farms* (2012) 38 ALRB No. 11.

The Board finds that in this instance the General Counsel has demonstrated the necessity for interim review as required by section 20242 subsection (b) of the Board's regulations. The General Counsel is correct that the Administrative

Law Judge's Order Denying the General Counsel's Motion for Default Judgment cannot be addressed effectively through the exceptions process. This is because once a hearing on the merits takes place, the motion will become moot, and there would be no effective remedy that could be provided as a result of the exceptions process.

Having determined that this matter is appropriate for interim review, the Board has examined whether the ALJ properly denied the General Counsel's Motion for Default Judgment, and has concluded as follows:

In *Allstar Seed Co.* (2003) 29 ALRB No. 2, the Board examined whether a default judgment should be entered when an employer failed to file an Answer to a Complaint. The Board observed that the standard for relief from default in California is codified in Code of Civil Procedure section 473. The pertinent portion of that provision is found in subdivision (b):

The court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect.

As the Board further explained in *Allstar Seed Co.*, *supra*, 29 ALRB No. 2 the overriding principle in applying this standard is illustrated by the following passage from *Weitz v. Yankosky* (1966) 63 Cal.2d 849:

It is the policy of the law to favor, wherever possible, a hearing on the merits, and appellate courts are much more disposed to affirm an order where the result is to compel a trial upon the merits than they are when the judgment by default is allowed to stand and it appears that a substantial defense could be made. Stated another way, the policy of the law is to have every litigated case tried upon its merits, and it looks with disfavor upon a party, who, regardless of the merits of the case, attempts to take advantage of the mistake,

surprise, inadvertence, or neglect of his adversary. (Citations omitted.)

In the matter currently before the Board, the ALJ found there was excusable neglect on the part of the Respondent in filing its Answer to the Complaint two days late. In finding excusable neglect, the Administrative Law Judge took into account that two of the days during the period prior to the due date of the Answer were State holidays. It is clear from the Respondent's Opposition to the General Counsel's Motion for Default Judgment that while the Respondent acknowledged its mistake in not serving the Answer on the Executive Secretary, the Respondent thought that its answer was timely filed on December 5, 2012. It was reasonable for the ALJ to infer that this was due to a misreading of the Board's regulation governing the computation of time periods.² The Administrative Law Judge also stressed that there had been "no apparent prejudice to the parties which would justify having this matter decided in a manner other than by a hearing on the actual merits of the allegations."

PLEASE TAKE NOTICE that given the policy favoring a hearing on the merits, the minimal nature of the delay that can reasonably be attributed to excusable neglect, and the lack of prejudice to the parties, the Board AFFIRMS the

² Defaults are not to be taken lightly, and a judge's decision with respect to a default judgment is not disturbed lightly. That said, the Board finds it problematic that Respondent's attorney in this matter failed to advance some reason for his neglect in his opposition to the General Counsel's motion for default judgment, leaving it to the ALJ to "find" excusable neglect and absence of prejudice, and also failed to avail himself of the opportunity to file a response to the General Counsel's Application for Special Permission to File an Interim Appeal.

Administrative Law Judge's Order Denying General Counsel's Motion to Deem
Allegations as True and for a Default Judgment.

By Direction of the Board.

Dated: January 25, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB