

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

SAN JOAQUIN TOMATO	)	Case Nos.	2011-CE-021-VIS
GROWERS, INC., A California	)		2011-CE-023-VIS
Corporation,	)		2011-CE-025-VIS
	)		2011-CE-026-VIS
	)		2011-CE-027-VIS
Respondent,	)		2011-CE-028-VIS
	)		2012-CE-017-VIS
)		
and	)	ORDER GRANTING	
	)	GENERAL COUNSEL’S REQUEST	
	)	FOR LEAVE TO SEEK COURT	
UNITED FARM WORKERS	)	ORDER REQUIRING COMPLIANCE	
OF AMERICA,	)	WITH INVESTIGATIVE SUBPOENA	
)		
)		
<u>Charging Party.</u>	)	Admin. Order No. 2013-16	

On February 26, 2013, the General Counsel of the Agricultural Labor Relations Board (General Counsel) filed a Request for Leave to Seek Court Order Requiring Compliance with an Investigative Subpoena in the above-captioned matters. The General Counsel issued the investigative subpoena on December 6, 2012, and required that I.S.A. Contracting Services Inc., (I.S.A.), a farm labor contractor engaged by Respondent San Joaquin Tomato Company, Inc. provide documents and records by December 19, 2012. General Counsel states that it agreed to extend the time to produce the documents until January 7, 2013; however, “I.S.A. has simply ignored its obligation to produce the documents.”

On March 12, 2013, the Board issued an Order allowing I.S.A. until March 19, 2013, at 5:00 p.m. to file and serve an opposition to the General Counsel's request. On March 18, 2013, I.S.A. timely filed its opposition.

I.S.A. indicates in its opposition that it has consistently informed General Counsel staff that it would comply with the subpoena but needed additional time to compile the documents. In support of its opposition, I.S.A. attaches correspondence between I.S.A.'s legal representative and General Counsel staff explaining that I.S.A. would produce the documents but was unable to comply until February as I.S.A.'s custodian of records was out of the country until then. I.S.A.'s attorney received the Request for Leave to Seek Court Order Requiring Compliance with an Investigative Subpoena on March 1, 2013, and wrote to General Counsel staff on March 4, 2013, indicating that the documents were being compiled so there was no need to proceed with court enforcement. General Counsel staff allegedly did not reply to this letter. On March 7, 2013, I.S.A.'s attorney again advised General Counsel staff that I.S.A. would comply with the subpoena, but that I.S.A.'s custodian of record had a family medical emergency. The medical emergency has since been resolved, and I.S.A. indicates that it anticipates fully complying with the subpoena by March 26, 2013.

The Board finds it troubling that neither the General Counsel's Request, nor the declaration filed in support of the request, indicates that I.S.A. communicated from early on in the process that it intended to comply with subpoena, as evidenced by the correspondence attached to its opposition, and instead represented to the Board that I.S.A. simply ignored its obligation to produce the documents. In the future, all parties

are advised that when seeking the Board's permission to seek court enforcement of a subpoena, the filing should be accompanied by all correspondence showing reasonable efforts to obtain documents sought prior to filing a request with the Board.

As of the date of this Order, I.S.A. has had ample time to provide the General Counsel with the documents sought in the investigative subpoena. I.S.A. represented in its opposition that it anticipates full compliance with the subpoena on or before March 26, 2013, which would presumably render the instant request moot. Nevertheless, to prevent further delay, the Board has decided to grant General Counsel leave to seek a court order only in the event that I.S.A. does not comply by that date.

PLEASE TAKE NOTICE that General Counsel's Request for Leave to Seek Court Order Requiring Compliance with an Investigative Subpoena is conditionally GRANTED pending I.S.A.'s non-compliance on March 26, 2013.

By Direction of the Board.

Dated: March 21, 2013

J. ANTONIO BARBOSA
Executive Secretary, ALRB