

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

D'ARRIGO BROS. CO. OF CALIFORNIA,)	Case No.	2012-CE-005-VIS
)		2014-CE-004-SAL
Respondent,)		
)		
and)	ORDER CONCERNING	
)	COMPLIANCE WITH NOTICES	
GREGORIO HERNANDEZ,)	IN LIEU OF SUBPOENAS	
)		
Charging Party,)		
)		
UNITED FARM WORKERS OF AMERICA,)	Admin. Order No.	2014-16
)		
Intervening Party.)		

On August 19, 2013, and also on January 28, 2014, the Intervening Party, the United Farm Workers of America (UFW), in accordance with the Board's regulations¹, served notices in lieu of subpoena² (notices) on Respondent, D'Arrigo Bros. Co. of California (D'Arrigo). D'Arrigo separately petitioned to revoke the notices; however, these petitions were denied by the Administrative Law Judge (ALJ) assigned to this matter, either in whole or in part, with the last denial occurring on February 6, 2014. D'Arrigo did not provide the information sought by the notices. On

¹ The Board's regulations are codified in the California Code of Regulations, title 8, section 20100 et seq.

² Allowed pursuant to sections 20250 (d) and (e) of the Board's regulations, which indicate that the giving of such a notice shall have the same effect as service of a subpoena.

May 20, 2014, the ALJ issued an order which, inter alia, recommended that the Agricultural Labor Relations Board (ALRB or Board) take action to enforce the notices, as D'Arrigo still had not complied with the same, despite the full evidentiary hearing on the underlying unfair labor practice (ULP) issues in this matter being scheduled to begin on July 8, 2014. The Board applied to the Monterey County Superior Court for an order enforcing the notices on June 9, 2014; however, that Court failed to consider the Board's application. The Board is prepared to continue its efforts to secure judicial enforcement of the notices. However, section 20262 of the Board's regulations provides, in relevant part:

The hearing shall be conducted by an administrative law judge designated by the Board, unless the Board or any member of the Board presides. The duty of the administrative law judge is to inquire fully into the facts as to whether the respondent has engaged in or is engaging in an unfair labor practice as set forth in the complaint or amended complaint. Between the time he or she is designated and the time the case is transferred to the Board the administrative law judge shall, subject to the limitations specified elsewhere in these regulations, have authority, with respect to cases assigned to him or her:

(a) To administer oaths and affirmations;

(b) To grant applications for subpoenas;

(c) To rule upon petitions to revoke subpoenas or notices to appear or produce, and to impose sanctions for failure to comply with appropriate subpoenas or notices to appear or produce. . . .

In light of D'Arrigo's ongoing refusal to provide the information sought by the notices as informed by the ALJ, and given the July 8, 2014 hearing date, it would be more expeditious for the responsible ALJ in this matter to resolve this discovery dispute by imposing any and all evidentiary sanctions he deems appropriate on D'Arrigo for its failure to comply with his May 20, 2014 order, pursuant to section 20262 of the Board's regulations.

Dated: June 12, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member