

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ACE TOMATO COMPANY, INC.,)
A California Corporation, DELTA PRE-)
PACK CO., A California Company,)
BERENDA RANCH LLC, A Limited)
Liability Company,)
CHRISTOPHER G. LAGORIO, An)
Individual, CHRISTOPHER G.)
LAGORIO TRUSTS, CREEKSIDE)
VINEYARDS, INC., A California)
Corporation, DEAN JANSSEN,)
An Individual, JANN JANSSEN, An)
Individual, KATHLEEN LAGORIO)
JANSSEN, An Individual, KATHLEEN)
LAGORIO JANSSEN TRUST, K.L.J.)
LLC, Limited Liability Company,)
K.L. JANSSEN LIVING TRUST,)
JANSSEN PROPERTIES, LLC, A)
Limited Liability Company, JANSSEN)
& SONS LLC, Limited Liability)
Company, LAGORIO FARMING CO.,)
INC., A California Corporation,)
LAGORIO FARMS, LLC, A)
Limited Liability Company,)
LAGORIO LEASING CO.,)
A California Company, LAGORIO)
PROPERTIES LP, A Limited)
Partnership, ROLLING HILLS)
VINEYARD LP, A Limited)
Partnership, QUAIL CREEK)
VINEYARD, a California Company,)
)
Respondents,)
)
AND)
)
UNITED FARM WORKERS OF)
AMERICA,)
)
Charging Party.)

Case Nos. 93-CE-037-VI
(20 ALRB No. 7)

ORDER RESPONDING TO 10/8/14
UFW OBJECTION TO
SETTLEMENT CONFERENCE;
GENERAL COUNSEL’S 11/3/14
REQUEST FOR RULING ON SAID
OBJECTION; ACE TOMATO’S
11/5/14 AND 11/7/14 REQUESTS
FOR CLARIFICATION; GENERAL
COUNSEL’S 11/10/14 MOTION
FOR RECONSIDERATION; AND
ACE TOMATO’S 11/10/14 MOTION
TO STRIKE

Admin. Order No. 2014-41

Background

On May 13, 2014¹, the Board issued Administrative Order (Admin. Order) No. 2014-07, which stated that responsibility for litigating and settling the instant makewhole matter did not lie with the General Counsel, but rather with the Regional Director for the Visalia Regional Office of the Board (Regional Director), as he is delegated by the Board the authority, pursuant to sections 20290-20292 of the Board's regulations², for the handling of compliance proceedings. The Board, pursuant to sections 1144 and 1160.3 of the Agricultural Labor Relations Act (ALRA or Act)³ is authorized to promulgate said regulations to carry out its responsibilities to make agricultural employees whole for any damages suffered due to unfair labor practices. Moreover, section 1142 of the Act empowers the Board to delegate these responsibilities to the personnel of its Regional Offices.

On October 1, the Executive Secretary of the Board issued an order granting Respondent Ace Tomato Company, Inc.'s (Ace's) request for a settlement conference (Conference) in this matter. On October 8, the Charging Party, the United Farmworkers of America (UFW) filed an objection (Objection) with the Board, stating that it would not attend the Conference, as it objected to the Board's instructions in Admin. Order No. 2014-07. On October 21, the Executive Secretary issued an order

¹ All dates are for calendar year 2014 unless otherwise specified.

² The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

³ The ALRA is codified at Labor Code section 1140, et seq. All further statutory citations are to the Labor Code unless otherwise indicated.

scheduling the Conference for November 24. On November 3, the General Counsel filed a “Request for Ruling” (GC Request) on the UFW’s Objection. On November 5 and November 7, Ace filed requests for clarification (Ace Requests) of the General Counsel’s role in this matter and the participants in the Conference, pursuant to section 20241(a) of the Board’s regulations. On November 6, the Board issued Admin. Order No. 2014-39, which reaffirmed the instructions given in Admin. Order No. 2014-07, to the effect that the Regional Director, and not the General Counsel, was responsible for the compliance proceedings in this case.

On November 10, the General Counsel filed a motion for reconsideration of Admin. Order No. 2014-39, arguing that the Regional Director was personally unavailable to handle this matter, and that her staff had filed several pleadings in this matter after the issuance of Admin. Order No. 2014-07, without objection. Also on November 10, Ace filed a motion to strike certain oppositions and requests filed by the General Counsel.

The UFW’s Objection to the Conference Order and Notice of Intention Not to Participate

Section 20242 of the Board’s regulations provides that rulings and orders of the Executive Secretary are not appealable, unless the Board grants special permission, via an application made to the Board within five days of the ruling or order. The UFW did not apply to the Board for permission to appeal the Executive Secretary’s October 1 order granting Ace’s request for the Conference. Thus, the Objection did not

comport with the Board's regulations, and requires no response, as it is not properly before the Board. It is hereby REJECTED.

As for the settlement conference scheduled for November 24 and the UFW's statement of intent not to participate, the Board's overriding goal in this matter is to secure a long-overdue remedy for the farm workers injured by Ace's unlawful conduct. The Board believes that the participation of the UFW, as the charging party and the certified representative of the aggrieved agricultural employees in this matter, would be productive to the expeditious settlement of this matter and would also appear to be in the best interests of the agricultural employees the UFW represents. Nevertheless, the UFW's attendance at the settlement conference cannot be compelled and the conference will go forward as scheduled.⁴

The General Counsel's Request for a Ruling of the UFW's Objection

The General Counsel's Request for ruling on the UFW's Objection and support for the Objection is REJECTED. Section 20248 of the Board's regulations allows for a settlement conference to be scheduled upon the written request of any

⁴ The Regional Director, acting in the name of the Board in compliance proceedings, has the authority to reach a settlement of this matter without the participation of the UFW. (See Board Regulation section 20298(b); See also National Labor Relations Board Casehandling Manual Part 1, section 10134.2 (stating that, although the charging party's inclusion in a formal settlement agreement is "desirable," the regional director may approve a unilateral settlement agreement where the charging party is unwilling to execute the proposed settlement agreement).) Any settlement agreement of this matter would, additionally, have to be approved by the Board itself. (Board Regulation section 20298(f)(1)(A).)

party. Ace properly asked for the Conference in writing, and its request was granted in due course.

The Ace Requests of November 5 and November 7

The Ace Requests were made pursuant to section 20241(a) of the Board's regulations. However, that regulation states that motions and applications made under it shall be directed to the assigned Administrative Law Judge (ALJ). Therefore, the Ace Requests are not properly before the Board and are REJECTED. Furthermore, the Ace Requests were improper in that clarifications are neither motions nor applications. Admin. Order Nos. 2014-07 and 2014-39 speak for themselves in plain language and do not require clarification.

The General Counsel's November 10 Motion for Reconsideration

The plain language of Admin. Order Nos. 2014-07 and 2014-39 directed that the Regional Director take responsibility for the makewhole proceedings in this case. The Board's regulations clearly state that the Regional Director is to handle compliance matters in the name of the Board. (See Board Regulation section 20290 et seq.) The General Counsel does exercise general supervision over the employees of the regional offices, pursuant to section 1149 of the Act. However, that general supervisory role includes supporting the functions of the Regional Directors, and is not an invitation for the General Counsel to countermand or undermine directions given by the Board to the Regional Director with respect to compliance matters, or to insert herself as a participant in such matters, which fall outside the limited scope of the General Counsel's exclusive authority, and with respect to which the General Counsel

has no role.⁵ In this respect, the General Counsel's disregard of the Board's prior orders and her repeated presentation of arguments as to how the Board should or should not proceed in this matter evidence a continuing failure on her part to understand the proper role of the General Counsel generally and the Board's directions in this case specifically.

Any attorneys working on this makewhole matter are directly subordinate to the Regional Director in his litigation of the matter – the General Counsel may not avoid the Board's orders and regulations by attempting to control the case from afar. The General Counsel's role in this matter is strictly limited to providing whatever resources and staff the Regional Director may require to fulfil his mandate to resolve the compliance proceedings in this matter. The Motion for Reconsideration is thus DENIED.

Ace's Motion of November 10

As with the Ace Requests discussed above, this Motion was made pursuant to section 20241(a) of the Board's regulations, and thus should have been made to the ALJ. It is therefore REJECTED as not being properly before the Board.

PLEASE TAKE NOTICE, that all the above-described pleadings in the instant matter filed by the various parties are invalid and hereby REJECTED or DENIED as

⁵ Under Labor Code section 1149 the General Counsel is given "final authority" only with respect to "the investigation of charges and issuance of complaints . . . and with respect to the prosecution of such complaints before the board."

applicable. The Board reminds all parties to file any further pleadings in accordance with the regulations, so as to be heard by the proper authority.

Dated: November 18, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member