

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 DENYING REGIONAL
DIRECTOR'S AND UFW'S
APPLICATIONS FOR SPECIAL
PERMISSION TO APPEAL RULINGS
OF THE EXECUTIVE SECRETARY;
ORDER REMITTING NOTICE OF
WITHDRAWAL OF FIFTH
MAKEHOLE SPECIFICATION TO
THE ALJ

Background

On November 18, 2014¹, the Board issued Administrative Order (Admin. Order) No. 2014-41, which reaffirmed that, consistent with prior Admin. Orders No. 2014-07 and No. 2014-39, 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. Admin. Order No. 2014-41 clearly stated:

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.** (Emphasis added.)

On November 20, the Regional Director filed a Notice of Representation (Notice) with the Board. The Notice purported to fully authorize certain attorneys, including some from the General Counsel's office, to assist and represent the Regional Director in the litigation and resolution of this matter. However, the Notice specified that the General Counsel herself was one of those

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.

attorneys – in fact, she was the first attorney named therein. This Notice was rejected by the Board on November 21, in Admin. Order No. 2014-43.

On December 5, the Regional Director filed a motion to continue the makewhole hearing, currently scheduled to begin on December 15, to June 8, 2015. On December 8, Respondents Ace Tomato Company, Inc., et al (Ace) filed an opposition to the continuance. Also on December 8, the Charging Party, United Farm Workers of America (UFW) filed its own opposition to the continuance, and moved that the Board accept the Notice that had been rejected on November 21. On December 9, the Board's Acting Executive Secretary (Executive Secretary) denied the Regional Director's motion for a continuance, and refused to consider the UFW's motion to accept the Notice, as it was not properly before him. On December 10, the Regional Director filed an application (RD's Application) for special permission to appeal the denial of the continuance.

On December 11, Ace filed an opposition to the RD's Application. Also on December 11, the UFW filed its own application (UFW Application) for special permission to appeal the Executive Secretary's denial of the motion to accept the Notice. We deny both the RD's Application and the UFW's Application for the reasons discussed below.

The Regional Director's Application Misconstrues The Board's Prior Orders

The plain language and clear terms of Admin. Orders No. 2014-07, No. 2014-39, No. 2014-41, and No. 2014-43 instruct the Regional Director to take responsibility for the makewhole proceedings in this case. The Board reminds the

Regional Director that its previous orders explicitly prohibit only the General Counsel from having any personal involvement in this matter.³ However, the Regional Director, in his Application, claims that the Board's denial of the Notice in Admin. Order No. 2014-43 deprived him of representation by attorneys Cristina Peña and Jorge Gaitán, both of whom work in the General Counsel's office in Sacramento. This claim is incorrect. The Board has never prohibited attorneys Cristina Peña and Jorge Gaitán from working on this matter. They, along with any other attorney(s) in the various regions, or in the General Counsel's Sacramento office (EXCEPT the General Counsel personally) may do so, provided that this work is done under the supervision of the Regional Director.

In light of the consistent language in the Board's previous Admin. Orders, the RD fails to show that he lacks the attorneys and resources to effectively litigate the case. The RD's Application states that Ms. Peña and Mr. Gaitán have "developed expertise in the complex facts and law involved" in this matter, and that they are "prepared to move this case forward on schedule."

³ The ALRA grants the Board the authority to delegate compliance matters and the Board has delegated this authority to the General Counsel previously. However, the previous handling of this matter, specifically, the settlement submitted to the Board, violated the ALRA as noted in Admin. Orders No. 2013-35 and 2013-43, and the General Counsel appeared to be unwilling or unable to recognize the nature and limitations of her former role as the Board's agent for compliance. Accordingly, the Board concluded that it was necessary to return those responsibilities to the Regional Director, as contemplated in the Board's regulations.

The UFW's Application is Rejected as Not Properly Before the Board for Consideration

In his December 9 ruling, the Executive Secretary correctly stated that the UFW's December 8 motion for acceptance of the Notice constituted a request for consideration of Admin. Order No. 2014-43, and refused to consider it, as it was not properly before him. Section 20286(d) of the Board's regulations provides that a party may, under extraordinary circumstances, move for reconsideration of a Board action, as long as such motion is made within five days of such action. Since Admin. Order No. 2014-43 was issued on November 21, any motion for reconsideration was due on December 2, according to the computation of time period procedures specified in Section 20170(b) of the Board's regulations. Therefore, the UFW's Application is not timely, and is hereby REJECTED as not properly before the Board.

Conclusion

PLEASE TAKE NOTICE that the Regional Director's Application for Special Permission to Appeal the Denial of Motion for Continuance is hereby DENIED, and the UFW's Application for Special Permission to Appeal Denial of Motion for Board Acceptance of Regional Director's Notice of Representation is REJECTED.

Subsequent to the submission of Special Permission applications by the Regional Director and UFW, the Regional Director has submitted a "Notice of Withdrawal of Fifth Makewhole Specification." Under our regulations, this withdrawal may be granted without leave in the same manner as a withdrawal of a complaint. (section 20293 (b).) A complaint may be withdrawn without leave prior to the commencement of the hearing.

(section 20222(b).) However, Board regulation section 20248 states that after a complaint has issued where the matter is in settlement conference, the matter is before the Administrative Law Judge. We therefore remit this issue to the Administrative Law Judge assigned to the compliance hearing to determine whether the withdrawal should be granted and, if granted, whether it should be granted with or without prejudice.

Dated: December 12, 2014

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member