

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

ASSOCIATED TAGLINE, INC.,)	Case Nos. 2012-CE-006-SAL
dba AG SERVICES,)	2013-CE-040-SAL
)	
Respondent,)	ORDER GRANTING THE
)	GENERAL COUNSEL'S
)	REQUEST TO SEEK
)	COURT ORDER
)	ENFORCING SUBPOENA
and)	DUCES TECUM
)	
TEAMSTERS UNION LOCAL)	
NO. 890,)	
)	
<u>Charging Party.</u>)	Admin. Order No. 2015-11

On May 15, 2015¹, the General Counsel of the Agricultural Labor Relations Board (ALRB/Board) issued a subpoena duces tecum (subpoena) in the above captioned matter, requesting certain documents by May 26. The subpoenaed party, Respondent, asked the General Counsel for an extension of time to respond to the subpoena, and the General Counsel agreed to a new deadline of June 1. At no time did Respondent file a petition to revoke the subpoena pursuant to subdivision (d) of section 20217 of the Board's regulations². Subdivision (d) of section 20217 provides that a petition to revoke a subpoena issued pursuant to section 20217 must be filed within five days after service of the subpoena.

¹ All dates are for 2015 unless otherwise indicated.

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

On July 24, the General Counsel filed a Request for Subpoena Enforcement (Request) with the Board. The General Counsel alleges that Respondent has failed to provide the records sought by the subpoena. On July 31, Respondent timely filed an opposition to the Request, stating that the Request impermissibly sought to use an investigative subpoena after the filing of a complaint in this matter. Respondent also argued that the materials sought by the subpoena are protected by the attorney-client privilege, the attorney work product privilege, and the ethical duty of confidentiality between attorney and client.

Sections 20217, subdivision (e), and 20250, subdivision (b) of the Board's regulations requires that subpoenas seek information that is material to the issues involved in the case. The Board has reviewed the subpoena in the instant matter and finds that it seeks materials consistent with the standard set forth in these regulations.

The Board rejects Respondent's first argument. Precedent supports the conclusion that administrative subpoenas survive the issuance of a complaint. In *Linde Thomson Langworthy Kohn & Van Dyke v. Resolution Trust Corp.* (D.C. Cir. 1993) 5 F.3d 1508, the Court of Appeals held that since the federal statute authorizing the Resolution Trust Corp. (RTC) to investigate matters under its jurisdiction did not contemplate the termination of such authority upon the commencement of civil proceedings, investigative subpoenas could be enforced after the filing of a civil complaint. (*Id.* at pp. 1517-1518.) Thus, Respondents' contention that the subpoenas did not survive the issuance of the complaint in this matter lacks merit.

Respondent may raise its second argument regarding privilege before the superior court during the subpoena enforcement proceedings.

PLEASE TAKE NOTICE that the General Counsel's Request is GRANTED pursuant to Board regulations sections 20217, subdivision (g), and 20250, subdivision (k).

PLEASE TAKE FURTHER NOTICE that in this matter the General Counsel is delegated the authority on behalf of the Board to initiate the appropriate court proceedings, as necessary.

Dated: August 20, 2015

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member