

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

BUD ANTLE, INC., dba BUD OF	)	Case Nos.	2012-CE-056-SAL
CALIFORNIA, INC., and DOLE	)		2013-CE-001-SAL
FRESH VEGETABLES, INC.,)		
	)	ORDER DENYING RESPONDENTS'	
Respondents,	)	MOTION FOR RECONSIDERATION	
	)	AND GRANTING GENERAL	
and	)	COUNSEL'S REQUEST FOR	
	)	ENFORCEMENT OF SUBPOENAS	
TEAMSTERS UNION LOCAL)		
NO. 890,	)	[8 Cal. Code Regs., § 20242(b)]	
)		
Charging Party.	)	Admin. Order No. 2015-12	
)		

On August 11, 2015, the General Counsel filed with the Agricultural Labor Relations Board (ALRB or Board) a request to judicially enforce subpoenas served on the Respondents in the above-captioned matter. On August 20, 2015, the Executive Secretary granted Respondents' request to respond to the General Counsel's request for subpoena enforcement. However, instead of filing such a response, and although the Board had not ruled on the General Counsel's request for judicial enforcement, the Respondents filed¹ with the Board a "Motion to Reconsider Board's Decision to Grant General Counsel's Request for Subpoena Enforcement" (Motion). The Board's Executive Secretary gave the General Counsel and the Charging Party

¹ Section 20286(d) of the Board's regulations require a motion for reconsideration of any Board action, other than a final decision and order, to be filed within five (5) days of the service of the action. (Cal. Code Regs., tit. 8, § 20286, subd. (d); see also Cal. Code Regs, tit. 8, § 20170.)

until August 28, 2015, to file oppositions to the Motion. The General Counsel and the Charging Party both timely filed such oppositions.

We find that the Respondents' Motion, in addition to being untimely and procedurally inaccurate, has failed to state sufficient legal reason why reconsideration is necessary as required by the Board regulations (Cal. Code Regs. tit. 8, § 20286, subd. (d).). Therefore, we DENY their Motion for the reasons discussed below.

Additionally, we GRANT the General Counsel's request for judicial enforcement of the subpoenas and delegate to the General Counsel authority on behalf of the Board to initiate the appropriate court proceedings, as necessary.

BACKGROUND

On November 18, 2014, the General Counsel served Respondents with two subpoenas duces tecum, as well as with subpoenas ad testificandum for two persons. These subpoenas were served as part of the General Counsel's investigation of charges 2015-CE-056-SAL and 2013-CE-001 SAL, which were filed against Respondents on August 6, 2012, and January 4, 2013, respectively. On December 2, 2014, Respondents filed petitions to revoke all the subpoenas with the Executive Secretary of the Board. On December 4, 2014, the General Counsel requested leave to respond to the petitions. On December 9, 2014, the General Counsel issued a complaint involving both charges, to wit, the above-captioned matter. The complaint alleged, inter alia, that Respondents were a single employer. Respondents denied this in their answer to the complaint, filed on December 22, 2014.

On April 15, 2015, an Administrative Law Judge (ALJ) for the Board granted the General Counsel's request for leave to respond to the petitions. On April 21, 2015, the Executive Secretary extended the General Counsel's deadline to respond to April 28, 2015, and assigned a different ALJ to rule on the petitions. The General Counsel timely filed an opposition to the Petitions. On May 22, 2015, the ALJ requested further briefing from the parties on the viability of the subpoenas. On May 27, 2015, the General Counsel consolidated both charges into a single case (the above-captioned matter) for purposes of hearing, currently scheduled for October 1, 2015.

Respondents submitted their response brief on May 29, 2015, and the General Counsel submitted her supplemental brief on June 5, 2015. On June 18, 2015, the ALJ issued an order (Order) granting the petition to revoke the subpoenas duces tecum in part. However, of the 208 requests in the subpoenas duces tecum, the petition to revoke was granted as to only five of them, with three other requests modified, with orders to Respondents to provide the information sought, consistent with such modification. The ALJ denied the petition to revoke all the remaining requests in the subpoenas duces tecum, and denied the petition to revoke the subpoenas ad testificandum in its entirety. The Order further directed Respondents to provide all remaining information and documents sought by the subpoenas duces tecum, and also to make the persons named in the subpoenas ad testificandum available for interview by the General Counsel.

Respondents filed a request for special permission to appeal the ALJ's Order (Request) on June 25, 2015, and the General Counsel timely filed an opposition (Opposition) to the Request on July 8, 2015, in which the Charging Party, Teamsters Union Local No. 890 (Teamsters), joined. Respondents argued that compliance with the Order would potentially cause harm that could not be remedied through the exceptions process after hearing; that the subpoenas are overbroad, burdensome, and irrelevant; that compliance with the Order would force Respondents to reveal sensitive business and trade secret information, as well as compel production of information in violation of the privacy rights of Respondents' employees; that the subpoenas exceed the General Counsel's investigatory powers; that the subpoenas should not now be enforced, as the matter has proceeded to the prosecution stage, as opposed to the investigation phase; and that the parties have already agreed to settle the dispute.

The General Counsel's Opposition argued that Respondents' Request is an impermissible interlocutory appeal; that Respondents' have failed to provide any significant factual or legal justification for their objections to the subpoenas, and have failed to meet their burden of proof; that Respondents have untimely introduced new information and arguments in the Request; that the subpoenas are enforceable even after the filing of the complaint in this matter; that Respondents' privacy and trade secret objections fail to pass muster; and that the settlement agreement between the parties is irrelevant and outside the scope of the current inquiry.

On July 16, 2015, the Board issued and served on all parties Admin. Order No. 2015-10, denying Respondent's Request for the reasons specified therein.

On August 11, 2015, the General Counsel filed a request with the Board seeking enforcement of the subpoenas in superior court. On August 13, 2015, the Executive Secretary issued an order granting Respondents until August 20, 2015, to respond to the General Counsel's request. Instead of filing such a response, however, Respondents filed their Motion on August 20, 2015.

DISCUSSION

The Motion was Untimely Filed

Section 20286, subsection (d) of the Board's regulations provides that a party may move for reconsideration of Board actions in unfair labor practice cases, other than a final decision and order, because of extraordinary circumstances, and such motion must be made within five days after service of the Board's action. Although Motion seeks "reconsideration" of a Board order, the Board has not (until today) issued an order concerning the subpoenas other than Admin. Order No. 2015-10, which was served on July 16, 2015. The deadline for any motion for reconsideration of that order was July 23, 2015, pursuant to section 20170 of the Board's regulations. However, Respondent's Motion was filed on August 20, 2015. Therefore, to the extent that the Motion seeks reconsideration of Admin. Order No. 2015-10, it was untimely, and the Board is justified in rejecting it for that reason alone.

Respondents Failed to Demonstrate Extraordinary Circumstances, or Provide any New Justification for Opposing the General Counsel's Request for Subpoena Enforcement

Even treating Respondents' Motion as an authorized response to the General Counsel's August 11, 2015 request, which would vitiate the timeliness issue, it

still fails. The Motion simply reiterates Respondents' arguments, previously made in their Request, that this case is moot, and that compliance with the subpoenas would be excessively burdensome. These arguments are not new, and fail to demonstrate any extraordinary circumstances which would justify reconsideration of Admin. Order No. 2015-10. Moreover, as the General Counsel and Charging Party explained in their oppositions to the Motion, this matter is not moot, as there are still issues in dispute between Respondents and the Charging Party with respect to alleged unfair labor practices.

Respondents' Motion is Procedurally Inaccurate

Respondents' Motion, by its very title, implies that the Board has granted the General Counsel's request for enforcement of the subpoenas. The Board has never done so. Admin. Order No. 2015-10 only denied the Respondents permission to appeal the ALJ's Order regarding the subpoenas. The Board has not, before today, issued a ruling on the General Counsel's August 11, 2015 request to seek enforcement of the subpoenas.

CONCLUSION

PLEASE TAKE NOTICE THAT the Respondents' Motion is DENIED.

PLEASE TAKE ADDITIONAL NOTICE that the General Counsel's August 11, 2015 request to seek enforcement of the subpoenas 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: September 2, 2015

William B. Gould IV, Chairman

Genevieve A. Shiroma, Member

Cathryn Rivera-Hernandez, Member