

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

FOUR SEASONS VINEYARD	)	Case No.	2018-CE-040-SAL
MANAGEMENT,	)		
	)		
Respondent,	)		
	)	ORDER DENYING GENERAL	
and,	)	COUNSEL’S REQUEST FOR	
	)	BOARD ACTION TO ENFORCE	
ALBERTA GARCIA,	)	SUBPOENA DUCES TECUM	
	)		
Charging Party.	)	Admin. Order No. 2018-16	
	)		
	)	(November 30, 2018)	
	)		

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On November 7, 2018, the General Counsel of the Agricultural Labor Relations Board (the “ALRB” or “Board”) filed with the Board a Request for Board Action to Enforce Subpoena Duces Tecum (the “Request”) and supporting declaration.<sup>1</sup> The General Counsel asserts that a subpoena duces tecum the (“subpoena”) was properly served upon respondent Four Seasons Vineyard Management (“Respondent”) and that Respondent submitted letters to the General Counsel refusing to provide the information requested in the subpoena. The General Counsel also asserts that Respondent did not file a petition to revoke the subpoena. The General Counsel requests that the Board authorize

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<sup>1</sup> The General Counsel’s Request for Board Action to Enforce Subpoena Duces Tecum paraphrases the allegations of the underlying unfair labor practice charge and describes correspondence exchanged between the parties concerning it and the General Counsel’s document requests. However, the General Counsel’s Request does not include a copy of the unfair labor practice charge nor any of the referenced correspondence between the parties. It is the General Counsel’s burden to include copies of all information relevant to its request.

subpoena enforcement proceedings in superior court pursuant to California Code of Regulations, title 8, section 20250, subdivision (k).

On November 13, 2018, Respondent filed an opposition to the Request. With its opposition, Respondent included a copy of the unfair labor practice charge and correspondence between the parties regarding the General Counsel's request for information.<sup>2</sup> In its opposition, Respondent contends, inter alia, that the unfair labor practice charge does not satisfy the standards set forth in Board regulation 20202, subdivision (c), which requires that an unfair labor practice charge set forth a short statement of the facts allegedly constituting an unfair labor practice.

The unfair labor practice charge states as follows, in its entirety:

On or about June 2018, Four Seasons Vineyard Management, through its agents including but not limited to, foreman Antonio Herrera, Supervisor Emiliano (last name unknown), and others, retaliated against Alberta Garcia and other workers for complaining about working conditions to Human Resources Representative (name and last name unknown). As alleged Four Seasons Vineyard Management's actions constitute a violation of the Act.

It is the General Counsel who, pursuant to section 1149 of the Act, has final authority with respect to the investigation of unfair labor practice charges and issuances of complaints. (*Mann Packing Co., Inc.* (1989) 15 ALRB No. 11, p. 7.) Board regulation 20217 authorizes the General Counsel to issue and serve investigative subpoenas to aid in

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<sup>2</sup> Respondent's opposition filing includes a September 24, 2018 letter from the General Counsel wherein the General Counsel provided additional details regarding the allegations of the charge. However, these allegations are not contained in the charge itself. Board regulation 20202, subdivision (c) requires that a charge contain a "short statement of facts allegedly constituting an unfair labor practice."

her investigation of unfair labor practice charges and, pursuant to subdivision (g) of Board regulation 20217, the General Counsel may request the Board commence an action in superior court to enforce an investigative subpoena where a party has not or refuses to comply. (See Cal. Code Regs., tit. 8, § 20250, subd. (k).) As a general rule, judicial enforcement of an administrative subpoena is warranted where the subpoena “was regularly issued and the records sought are relevant to the administrative inquiry.” (*ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d 651, 664; see *Link v. NLRB* (4th Cir. 1964) 330 F.2d 437, 439-440 [upholding NLRB’s pre-complaint investigatory subpoena power, and finding this subpoena power “limited only by the requirement that the information sought must be relevant to the inquiry”].)

Here, the unfair labor practice charge alleges only that an individual and other unnamed workers complained about “working conditions” and were “retaliated against.” There is no indication what the subject or subjects of the workers’ complaints were or what constituted the unlawful retaliatory act. An unfair labor practice charge is not a pleading but is “an administrative step necessary to set the Board’s investigatory process in motion.” (*Rogers Food, Inc.* (1982) 8 ALRB No. 19, ALJ Dec. p. 5 [“The charge need not be technically precise so long as it informs the party charged of the general nature of the alleged violations”], emphasis in original.) Nevertheless, in order for the Board to perform its function of evaluating subpoena enforcement requests, the allegations set forth in the unfair labor practice charge must contain enough factual specificity to permit the Board to make a determination regarding whether the subpoenaed records are relevant to the investigation of the underlying charge. The allegations set forth in the instant unfair labor practice charge, particularly the

lack of identification of the alleged retaliatory act, do not meet that standard. (Lab. Code, § 1151, subd. (a); see *Lotus Suites v. NLRB* (1994) 32 F.3d 588, 591-592.)

Accordingly, the General Counsel's Request is DENIED.

DATED: November 30, 2018

Genevieve A. Shiroma, Chairwoman

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member