

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

COASTAL VINEYARD CARE)	Case No. 2018-CE-067-SAL
ASSOCIATES,)	
)	ORDER SETTING TIME FOR
Respondent,)	GENERAL COUNSEL TO AMEND
)	REQUEST FOR SUBPOENA
and)	ENFORCEMENT
)	
)	
SERAFIN ORTIZ,)	Admin. Order No. 2019-01
)	
Charging Party.)	
)	(June 7, 2019)
)	
)	
)	

On May 20, 2019, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) filed a request for Board authorization to commence subpoena enforcement proceedings in superior court pursuant to Board regulation 20250, subdivision (k).¹ The General Counsel asserts that a subpoena duces tecum and four subpoenas ad testificandum were properly served upon respondent Coastal Vineyard Care Associates.

Under Board regulation 20250, subdivision (k), the Board grants a request to seek judicial enforcement of a subpoena unless enforcement “would be inconsistent with law or the policies of the Act.” The General Counsel’s authority to subpoena records is broad and, as a general rule, enforcement of an administrative subpoena is warranted

¹ The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

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”]; Lab. Code, § 1151 [Board and its agents to have access to evidence “that relates to any matter under investigation or in question”].)

According to the General Counsel’s request, charging party Serafin Ortiz filed an unfair labor practice charge against respondent on November 21, 2018. The General Counsel describes the charge as alleging respondent terminated charging party and a coworker on November 7, 2018, “because they complained about the safety of their crew’s working conditions.” However, the General Counsel’s request to the Board does not include a copy of the unfair labor practice charge.

On April 8, 2019, the General Counsel served on respondent a subpoena duces tecum and four subpoenas ad testificandum. The subpoenas themselves along with supporting declarations are attached as exhibits to the General Counsel’s request to the Board. Respondent did not file a petition to revoke any of the subpoenas as provided by Board regulation 20217, subdivision (d).²

² Our Act and regulations are clear that the exclusive means by which a party may object to an investigatory subpoena is by a petition to revoke. (Lab. Code, § 1151, subd. (a); Cal. Code Regs., tit. 8, § 20217, subd. (d).) By not availing itself of this exclusive remedy here, respondent has waived any objections to the General Counsel’s subpoenas. (*NLRB v. Fresh & Easy Neighborhood Market, Inc.* (9th Cir. 2015) 805 F.3d 1155 [party’s failure to file petition to revoke subpoena barred party from later challenging it];

As we stated in *Four Seasons Vineyard Management* (Nov. 30, 2018) ALRB Admin. Order No. 2018-16, p. 1, fn. 1, “[i]t is the General Counsel’s burden to include copies of all information relevant” to a request for Board authorization to commence subpoena enforcement proceedings, which in the context of an investigatory subpoena must include a copy of the charge itself. Without a complete record, the Board is unable to satisfy itself the records sought in the subpoenas are, in fact, relevant to the allegations of the underlying unfair labor practice charge.

PLEASE TAKE NOTICE THAT the General Counsel shall file with the Executive Secretary of the Board a copy of the charge referenced in the General Counsel’s request for Subpoena Enforcement. Said charge shall be electronically filed and served no later than 4:00 p.m. on Monday, June 10, 2019. (Cal. Code Regs., tit. 8, § 20169, subd. (d).)

DATED: June 7, 2019

Cathryn Rivera-Hernandez, Member

Isadore Hall, III, Member

Barry Broad, Member

NLRB v. Uber Technologies, Inc. (N.D. Cal. 2016) 216 F.Supp.3d 1004 [same with respect to investigative subpoenas]; see also *People v. Skelton* (1980) 109 Cal.App.3d 691, 710.)