

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

PREMIERE RASPBERRIES, LLC,	)	Case No. 2018-CE-004-SAL
	)	(44 ALRB No. 9)
Respondent,	)	(Admin. Order No. 2020-13-P)
	)	(Admin. Order No. 2020-05-P)
)	
and	)	ORDER DENYING REGIONAL
	)	DIRECTOR'S REQUEST FOR AN
	)	ORDER SEALING STATEMENT IN
UNITED FARM WORKERS OF	)	SUPPORT OF FORMAL
AMERICA,	)	BILATERAL SETTLEMENT
	)	AGREEMENT
Charging Party.	)	Admin. Order No. 2020-18-P
)	
	)	(November 9, 2020)
)	
)	
)	

On October 28, 2020, the Regional Director of the Salinas Region (Region) of the Agricultural Labor Relations Board (ALRB or Board) filed with the Board a Request for an Order Sealing the Regional Director's Statement in Support of the Formal Bilateral Settlement Agreement (Sealing Request). Attached to the Sealing Request was the Regional Director's Statement in Support of the Formal Bilateral Settlement Agreement (Statement in Support) with attachments and a declaration of Michael I. Marsh (Marsh Declaration).¹ Because it fails to meet the standards applicable to the

¹ Given the nature of the Region's Sealing Request, we consider the request itself filed with the Board but the various attachments to be lodged conditionally under seal pending disposition of the Sealing Request. (See Cal. Rules of Court, rule 2.551; *Overstock.com, Inc. v. Goldman Sachs Group, Inc.* (2014) 231 Cal.App.4th 471, 487, fn. 8.)

sealing of records filed with the Board, the Sealing Request is DENIED WITHOUT PREJUDICE. The Regional Director may refile a request consistent with the standards set forth below.²

BACKGROUND

On April 10, 2020, the Region submitted to the Board a proposed formal bilateral settlement agreement (the April Agreement) constituting a “global” settlement of various outstanding matters involving Premiere Raspberries, LLC (Premiere) and the United Farm Workers of America (UFW). The April Agreement encompassed unfair labor practice case no. 2018-CE-004-SAL, in which the Board ordered bargaining makewhole based upon Premiere’s unlawful refusal to bargain with the UFW, as well as a related mandatory mediation and conciliation (MMC) case (no. 2018-MMC-002), in which the Board ordered into effect a contract arrived at through MMC proceedings.³ The Board disapproved the April Agreement in *Premiere Raspberries, LLC* (May 19, 2020) ALRB Admin. Order No. 2020-13-P due to an insufficiently developed record concerning Premiere’s purported inability to pay the majority of the makewhole award, in addition to other aspects of the agreement that were inconsistent with the Agricultural

² We designate this order as precedential to provide guidance to parties in future cases who may seek to seal records from our public case files. (Board reg. 20287.)

³ The factual and procedural background of these cases are set forth more fully in the Board’s prior decisions and orders. (See *Premiere Raspberries, LLC* (2018) 44 ALRB Nos. 8, 9; *Premiere Raspberries, LLC* (Mar. 6, 2020) ALRB Admin. Order No. 2020-04; *Premiere Raspberries, LLC* (Mar. 6, 2020) ALRB Admin. Order No. 2020-05-P.)

Labor Relations Act (ALRA or Act) and the Board's regulations.⁴

In the Sealing Request, the Region states it subpoenaed records from Premiere after the disapproval of the April Agreement. Premiere agreed to provide records subject to a protective order, which was executed by the parties and approved by Principal Administrative Law Judge Mark Soble. The Region subsequently received records from Premiere's counsel, including operating agreements, California Secretary of State forms, check registers, bank statements, balance sheets, income and expense statements, invoices, and a depreciation schedule. The Region states that "certain documents" were marked as confidential by Premiere pursuant to the protective order and that, under the protective order, the Region agreed it would request an order to seal such information if it later sought to file any confidential information.

The Region now states in its Sealing Request that it "seeks to file with the Board confidential financial information taken from bank statements, check registers, income and expense statements, and balance sheets provided by Premiere." However, the Region did not actually lodge any such records with its Sealing Request, but rather only offers second-hand descriptions of the contents of those records in the Statement in Support and Marsh Declaration. The Region argues that "this sort of information is typically private" and that "[s]ome of this information is proprietary," but the information is also "essential to determining if Premiere has hidden any assets, or has an alter ego or successor." The Region concludes that the public interest is best served by sealing

⁴ The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

Premiere's information, allowing the Board to carry out its duties under the Act while protecting the information from public disclosure. Accordingly, the Region requests that the Board permit the Statement in Support to be filed under seal.⁵

DISCUSSION

A. Legal Standards Applicable to Sealing Records Filed With the Board.

The Board has authority to allow the filing of records under seal. (See *Napa Valley Vineyards, Co.* (1977) 3 ALRB No. 22, p. 6 [Board accepted evidence under seal].) However, the Board has not previously discussed in its precedential decisions the legal standards under which it will evaluate requests to file records under seal.

In *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178, 1217-1218, the California Supreme Court set forth a standard for evaluating requests to seal records filed in California courts, which balances confidentiality interests against the constitutional right of public access to court records. The holding of that case was later codified in California Rules of Court, rule 2.550. (Advisory Com. com. foll. Cal. Rules of Court, rule 2.550; *Los Angeles Times v. Superior Court* (2003) 114 Cal.App.4th 247, 255, fn. 4.) While the California Rules of Court are not binding on the Board, we agree with the Region that rule 2.550 states the appropriate standard to be used by the Board in evaluating requests to file records under seal.

⁵ While the Region states that it seeks to file the Statement in Support under seal, its request also appears to extend to the attached exhibits and the Marsh Declaration. The Marsh Declaration was lodged together with the Statement in Support and contains much of the same content as the Statement in Support. Accordingly, we understand the Region to be seeking to file both documents under seal.

Under rule 2.550(c), records are presumed to be open to the public unless confidentiality is required by law. Subdivision (d) sets forth that a court may order a record to be filed under seal only if it finds facts that establish:

- (1) There exists an overriding interest that overcomes the right of public access to the record;
- (2) The overriding interest supports sealing the record;
- (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed;
- (4) The proposed sealing is narrowly tailored; and
- (5) No less restrictive means exist to achieve the overriding interest.

An order sealing records must state the facts that support the findings and direct the sealing of only those documents and pages, or portions of documents and pages, that contain the material that needs to be placed under seal. (Cal. Rules of Court, rule 2.550(e).) All other portions must be included in the public file. (*Ibid.*) Rule 2.551(a) expressly prohibits the sealing of a record based solely on a stipulation or agreement between the parties. (*H.B. Fuller Co. v. Doe* (2007) 151 Cal.App.4th 879, 891.)

B. The Region Has Not Established an Overriding Interest in Confidentiality that Overcomes the Right of Public Access to Support Sealing the Records.

Records filed in proceedings before our Board are considered public, and case files of such proceedings are publicly accessible. Settlement agreements submitted to the Board for approval pursuant to Board regulation 20298, including any accompanying statements in support, thus are a matter of public record. Under the

applicable legal standard described above to support sealing a record, the Region must state facts sufficient for the Board to conclude that there is an “overriding interest” in confidentiality that overcomes the presumption in favor of public access. The Region has not done so here.

Initially, the Region does not identify what records Premiere has designated as confidential under the protective order and what statements in the Statement in Support are alleged to disclose confidential information derived from those records. Furthermore, the Region does not state any facts supporting the conclusion that there is an overriding interest in the confidentiality of any of the information contained in the Statement of Support. The Region’s conclusory assertions that the unspecified information is “typically private” or “proprietary” are not sufficient. (*H.B. Fuller Co. v. Doe, supra*, 151 Cal.App.4th 879, 898 [“without a clear enumeration of specific facts alleged to be worthy of the extraordinary measure of maintaining our records under seal, there is simply no basis to conclude that unsealing the records will actually infringe any interest of plaintiff’s or inflict any harm on it”].) The Region’s Sealing Request fails to set forth any factual basis establishing the overriding interest that supports sealing and that will be prejudiced if the records are not sealed. (Cal. Rules of Court, rule 2.550(d)(3).) The Region’s conclusory assertions of confidentiality, coupled with its failure to identify any prejudice or harms if the allegedly confidential information described in its Statement in Support is not sealed, do not provide us with any sufficient

grounds on which to order the records sealed.⁶

C. The Region’s Sealing Request Is Not Narrowly Tailored.

Rule 2.550(d)(4)-(5) requires that any order to seal records be narrowly tailored and constitute the least restrictive means to achieving the overriding interest in confidentiality. The Region’s request to protect discrete portions of the Statement in Support and Marsh Declaration allegedly containing confidential information by sealing the entirety of both documents clearly fails to meet this standard.⁷ While the Region has not identified the specific portions of the documents that are claimed to be confidential, there appears no reason why those portions could not be redacted with the remaining non-

⁶ In its Sealing Request, the Region describes several categories of financial records, and then states “[s]ome of this information is proprietary.” It is unclear what, exactly, is contended to be proprietary. While a company may have certain privacy or confidentiality interests in information pertaining to its financial condition, such financial information is not necessarily “proprietary.” Nor does California afford protection to information generally described as “proprietary.” As a general rule, the definition of “trade secret” under the California Uniform Trade Secrets Act sets forth the standard by which a company’s alleged proprietary information will be deemed subject to protection. (Civ. Code, § 3426.1, subd. (d) [affording protection to information, “including a formula, pattern, compilation, program, device, method, technique, or process,” that derives economic value from not being known to others and is subject to reasonable efforts to maintain its secrecy]; Evid. Code, § 1061, subd. (a)(1); see *Stadish v. Superior Court* (1999) 71 Cal.App.4th 1130, 1146; *Courtesy Temp. Serv. v. Camacho* (1990) 222 Cal.App.3d 1278, 1288.)

⁷ The scope of the Region’s Sealing Request also is unclear. The Region asks for the Statement in Support to be sealed, and the proposed settlement agreement itself is an exhibit to that statement. As previously stated, such materials — including the settlement agreement itself — are public records, as a general rule. Moreover, much of the information conveyed in the settlement agreement is set forth in the April Agreement, which was publicly filed with the Board. (*Savaglio v. Wal-Mart Stores, Inc.* (2007) 149 Cal.App.4th 588, 600.)

confidential portions available to the public.⁸

ORDER

The Regional Director's Request for an Order Sealing the Regional Director's Statement in Support of the Formal Bilateral Settlement Agreement is DENIED WITHOUT PREJUDICE. The Regional Director may refile a request to seal that is properly supported and tailored consistent with rule 2.550 of the California Rules of Court and this order. Any such sealing request should be submitted separately from the statement in support of the settlement agreement, including any supporting declaration, and the settlement agreement itself. If the statement in support and accompanying documents contain portions that are alleged to be confidential, the Region should publicly file with the Board redacted versions of the documents and separately lodge with the Board an unredacted version "conditionally under seal" for the Board's review.

DATED: November 9, 2020

Victoria Hassid, Chair

Isadore Hall, III, Member

⁸ See Cal. Rules of Court, rule 2.551(b)(5) [if necessary to prevent disclosure, documents "must be filed in a public redacted version and lodged in a complete, unredacted version conditionally under seal"].

Barry D. Broad, Member

Ralph Lightstone, Member

Cynthia N. Flores, Member