

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

UNITED FARM WORKERS OF	)	Case No. 2019-CL-005-SAL
AMERICA,	)	2019-CL-006-SAL
	)	2019-CL-007-SAL
	)	2019-CL-008-SAL
Respondent,	)	2020-CL-001-SAL
	)	
	)	ORDER GRANTING THE
and	)	GENERAL COUNSEL'S
	)	REQUEST FOR SUBPOENA
	)	ENFORCEMENT
JOSE FLORES RAMIREZ, et al.,	)	
	)	Admin. Order No. 2021-06
	)	
Charging Parties.	)	(March 16, 2021)
_____	)	

On February 12, 2021, the General Counsel of the Agricultural Labor Relations Board (Board) filed with the Board a request for subpoena enforcement in the above-captioned matter along with a supporting declaration. The General Counsel requests that the Board authorize the filing of a superior court action pursuant to Board regulations 20217, subdivision (g) and 20250, subdivision (k) to enforce a subpoena duces tecum served on respondent United Farm Workers of America (UFW) on May 21, 2020.<sup>1</sup> The General Counsel asserts that the subpoena was properly served on the UFW, that the Board denied the UFW's petition to revoke the subpoena on the merits (see *United Farm Workers of America (Flores Ramirez)* (Nov. 20, 2020) ALRB Admin.

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<sup>1</sup> The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

Order No. 2020-19), and that the UFW has not complied with the subpoena. The Board has considered the General Counsel's request, the UFW's response, and the record in this case and grants the General Counsel's request.<sup>2</sup>

### **PROCEDURAL HISTORY**

Between October 2019 and January 2020, charging parties filed five separate unfair labor practice charges with the ALRB's Regional Office in Salinas generally alleging the UFW unlawfully refused to allow them to register for employment with a particular employer based on their prior involvement in a decertification campaign against the UFW at another employer. On May 21, 2020, the General Counsel issued the investigatory subpoena duces tecum at issue in this matter.

The UFW filed a petition to revoke the subpoena, which the administrative law judge (ALJ) denied. The UFW then filed an application with the Board for special permission to appeal the ALJ's order. The Board upheld the ALJ's order denying the UFW's petition to revoke the subpoena in *United Farm Workers of America (Flores Ramirez)* (Nov. 20, 2020) ALRB Admin. Order No. 2020-19.

On February 12, 2021, the General Counsel filed with the Board a request that

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<sup>2</sup> The General Counsel did not include with its subpoena enforcement request a copy of the underlying unfair labor practice charges at issue. We previously have stated a subpoena enforcement request from the General Counsel must include such materials. (*Coastal Vineyard Care Associates* (June 7, 2019) ALRB Admin. Order No. 2019-01, p. 3, citing *Four Seasons Vineyard Management* (Nov. 30, 2018) ALRB Admin. Order No. 2018-16, p. 1, fn. 1.) However, we note the UFW previously included copies of the underlying charges in its previous request for special permission to appeal the administrative law judge's order denying its petition to revoke the subpoena. (See *Four Seasons Vineyard Management, supra*, ALRB Admin. Order No. 2018-16, p. 2.)

the Board apply to the superior court to enforce the subpoena, along with a supporting declaration, stating that the UFW has not complied with the subpoena. On February 18, 2021, the Board issued an order to show cause why the request should not be granted. (*United Farm Workers of America (Flores Ramirez)* (Feb. 18, 2021) ALRB Admin. Order No. 2021-03.) On February 25, 2021, the UFW filed its response to the order to show cause.

### **DISCUSSION**

Pursuant to its authority to investigate unfair labor practice charges, the Agricultural Labor Relations Act (ALRA or Act) grants the ALRB access to any evidence of any person subject to investigation. (Lab. Code, § 1151, subd. (a));<sup>3</sup> *King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, p. 4.) Board regulation 20217 authorizes the General Counsel to issue and serve investigative subpoenas requiring testimony or the production of records to aid in her investigation of unfair labor practice charges. (Cal. Code Regs., tit. 8, § 20217; *King City Nursery, LLC, supra*, ALRB Admin. Order No. 2020-01-P, p. 4.) The General Counsel’s investigative subpoena power is broad and limited only by the requirement that the information sought be relevant to the inquiry. (*King City Nursery, LLC, supra*, ALRB Admin. Order No. 2020-01-P, p. 5.) A person who does not intend to comply with a subpoena must file a petition to revoke the subpoena. (Cal. Code Regs., tit. 8, § 20217, subd. (d).)

Where a person fails to comply with an investigative subpoena, “the general counsel may request that the Board apply to an appropriate superior court for an

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<sup>3</sup> The Act is codified at Labor Code section 1140 et seq.

order requiring compliance . . .” (Cal. Code Regs., tit. 8, § 20217, subd. (g).) 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”]; *Coastal Vineyard Care Associates, supra*, ALRB Admin. Order No. 2019-01, pp. 1-2; *Four Seasons Vineyard Management, supra*, ALRB Admin. Order No. 2018-16, p. 3.)

There is no dispute the General Counsel’s subpoena was properly issued and served, and we already have determined the records sought by the subpoena are relevant to the General Counsel’s investigation of the underlying unfair labor practice charges and are described with sufficient particularity. (*United Farm Workers of America (Flores Ramirez), supra*, ALRB Admin. Order No. 2019-19; *NLRB v. G.H.R. Energy Corp.* (5th Cir. 1982) 707 F.2d 110, 113.)

The UFW’s response to our order to show cause largely repeats objections to the subpoena and arguments we addressed and rejected in our prior order. (*United Farm Workers of America (Flores Ramirez), supra*, ALRB Admin. Order No. 2019-19.) The UFW did not seek reconsideration of our prior order (Cal. Code Regs., tit. § 20286, subd. (d)) and may not relitigate matters decided in that order at this time.

PLEASE TAKE NOTICE that the General Counsel’s request for subpoena enforcement is GRANTED pursuant to sections 20217, subdivision (g) and 20250,

subdivision (k) of the Board's regulations. (Cal. Code Regs., tit. 8, §§ 20217, subd. (g); 20250, subd (k).) Authority is delegated to the General Counsel to commence such enforcement proceedings in superior court pursuant to Labor Code section 1151, subdivision (b), as necessary.

DATED: March 16, 2021

VICTORIA HASSID, Chair

ISADORE HALL III, Member

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member