

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

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| ST. SUPÉRY, INC. dba ST. SUPÉRY) | Case No. 2022-CE-015-SAL |
| VINEYARDS & WINERY,) | |
|) | |
| Charged Party,) | ORDER GRANTING GENERAL |
|) | COUNSEL’S REQUEST FOR |
| and) | SUBPOENA ENFORCEMENT |
|) | |
| UNITED FARM WORKERS OF) | Admin. Order No. 2022-06-P |
| AMERICA,) | |
|) | (September 28, 2022) |
| Charging Party.) | |
|) | |
|) | |
| _____) | |

ORDER

On August 26, 2022, the General Counsel of the Agricultural Labor Relations Board (ALRB or Board) filed a request that the Board authorize the filing of a superior court action to enforce a subpoena duces tecum and five subpoenas ad testificandum issued to charged party St. Supéry, Inc. dba St. Supéry Vineyards & Winery (St. Supéry). (Lab. Code, § 1151, subd. (b); Board regs. 20217(g), 20250(k).)¹

On September 14, we issued an order directing St. Supéry to show cause why the General Counsel’s request should not be granted. St. Supéry filed its response on September 21.

The record before us suggests a pattern of willful obstruction by St. Supéry to basic requests well within the scope of the charge and the General Counsel’s investigatory authority. Notably, St. Supéry does not dispute its failure to file any petition

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

to revoke the subpoenas at issue, nor does it dispute its outright failure to respond to any of the General Counsel's informal requests for the records and interviews it seeks that preceded resort to the subpoenas. St. Supéry's obstinacy represents a patent disregard for its agricultural employees' rights and its own obligations under the Agricultural Labor Relations Act (ALRA or Act), as well as our authority to enforce the Act.² We GRANT the General Counsel's request and urge it to seek prompt enforcement of the subpoenas in accordance with Labor Code section 1151, subdivision (b).³

PROCEDURAL BACKGROUND

The United Farm Workers of America (UFW) filed the underlying charge on April 8, 2022. The charge alleges beginning on January 26, 2022, and continuing, St. Supéry has refused to allow the UFW access to its workers pursuant to a collective bargaining agreement between the parties.

On May 26, Assistant General Counsel Christopher Mandarano spoke with St. Supéry's counsel, Gregory Wolflick, by telephone. According to Mandarano's declaration submitted with the General Counsel's enforcement request, Wolflick stated during this call that his client was unlikely to cooperate with the General Counsel's investigation and request for interviews. Since then, St. Supéry has failed to respond to repeated emails regarding the scheduling of interviews, as well as a June 17 letter in which the General Counsel also requested various categories of records to assist in its

² The ALRA is codified at Labor Code section 1140 et seq.

³ We designate this order as precedential pursuant to Board regulation 20287 based on the seriousness of the issues involved in this matter.

investigation. St. Supéry does not dispute these facts. St. Supéry's obstinacy eventually forced the General Counsel to resort to the issuance of formal subpoenas on July 28 in order to obtain the evidence it seeks to aid its investigation. Specifically, the General Counsel issued five subpoenas ad testificandum⁴ and one subpoena duces tecum seeking the following records:

- (1) communications received from the UFW requesting access since January 1, 2022;
- (2) responses to the UFW's access requests since January 1, 2022;
- (3) names and contact information for any farm labor contractor(s) hired by St. Supéry since January 1, 2022;
- (4) names of all workers employed through any farm labor contractor since January 1, 2022;
- (5) records related to any telephone calls, meeting requests, meetings, or meeting cancellations between St. Supéry and the UFW since January 1, 2022;
- (6) any agreements, side letters, or amendments relating to the parties' collective bargaining agreement executed September 25, 2021; and
- (7) any other documents St. Supéry believes is relevant to the General Counsel's investigation or support any defense St. Supéry may intend to raise.

St. Supéry did not file a petition to revoke any of the subpoenas pursuant to Board regulation 20217(d) and otherwise has failed to comply with or even acknowledge them. This enforcement request by the General Counsel followed. Notwithstanding its prior failures to respond to the General Counsel's informal investigation requests or the

⁴ The five testimonial subpoenas are directed to the following individuals at St. Supéry: (1) Annie Waterson, Director of Human Resources & Operations; (2) Michael Sholz, Vice President; (3) Dan Connors, Vineyards Manager; (4) Michael Garcia, Vineyards Manager; and (5) Emma Swain, Chief Executive Officer.

subpoenas, St. Supéry now contends the underlying dispute is subject to the arbitration procedure outlined in the parties' collective bargaining agreement and that the charge should be deferred to that process.

DISCUSSION

I. The ALRB's Subpoena Power and Judicial Enforcement

The ALRA vests in the General Counsel final authority with respect to the investigation of unfair labor practice charges and the issuance of complaints. (Lab. Code, § 1149.) To aid in the performance of these functions, the Act grants the Board access “at all reasonable times” to any evidence of any person subject to investigation or an unfair labor practice proceeding. (Lab. Code, § 1151, subd. (a).) This grant of authority is reinforced by the power to issue subpoenas requiring the testimony of witnesses or production of evidence. (*Ibid.*) Both our own precedent and applicable precedent under the National Labor Relations Act (NLRA)⁵ clearly establish the General Counsel's authority to obtain records or testimony from a charged party via subpoena to aid in its investigation of an unfair labor practice charge before issuance of a complaint. (*King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, p. 5; *NLRB v. North Bay Plumbing, Inc.* (9th Cir. 1996) 102 F.3d 1005, 1008 [“The Board may issue subpoenas requiring both the production of evidence and testimony during the investigatory stages of an unfair labor practice proceeding”]; *NLRB v. Carolina Food*

⁵ The NLRA is codified at 29 U.S.C. § 151 et seq. Labor Code section 1151 is modeled after NLRA Section 11 [29 U.S.C. § 161]. (*ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d 651, 663; see Lab. Code, § 1148 [stating the ALRB shall follow applicable precedent under the NLRA].)

Processors (4th Cir. 1996) 81 F.3d 507, 512.)⁶ “The General Counsel’s investigative subpoena power is broad and ‘limited only by the requirement that the information sought must be relevant to the inquiry.’” (*King City Nursery, LLC, supra*, ALRB Admin. Order No. 2020-01-P, p. 5, quoting *Link, supra*, 330 F.2d at p. 440; *Carolina Food Processors, supra*, 81 F.3d at p. 511.)

A person that does not intend to comply with an investigatory subpoena must file a petition to revoke it within five days, stating “with particularity the grounds for objecting” to the subpoena. (Board reg. 20217(d).) Objections to a subpoena will be sustained where the records sought are not relevant to any matter properly under investigation, are not described with sufficient particularity, or are privileged or confidential. (Board reg. 20217(e); Lab. Code, § 1151, subd. (a).) Failure to file a petition to revoke waives any objections to the subpoena. (*King City Nursery, LLC, supra*, ALRB Admin. Order No. 2020-01-P, pp. 6, 11; *Lily’s Green Garden, Inc., supra*, ALRB Admin. Order No. 2021-09, p. 4; *Detroit Newspaper Agency* (1998) 326 NLRB 700, 751, fn. 25; *NLRB v. Frederick Cowan & Co.* (2nd Cir. 1975) 522 F.2d 26, 28; *NLRB v. Williams*

⁶ See also *Lily’s Green Garden, Inc.* (Oct. 26, 2021) ALRB Admin. Order No. 2021-09, pp. 3-4; *Coast King Packing, LLC* (Sept. 2, 2020) ALRB Admin. Order No. 2020-16, p. 2; *Coastal Vineyard Care Associates* (June 7, 2019) ALRB Admin. Order No. 2019-01, pp. 1-2; *Four Seasons Vineyard Management* (Nov. 30, 2018) ALRB Admin. Order No. 2018-16, pp. 2-3; *Link v. NLRB* (4th Cir. 1964) 330 F.2d 437, 439 [“the Board may utilize the investigatory subpoena power against parties to an unfair labor practices charge in aid of pre-complaint investigations”]; *NLRB v. Kingston Trap Rock Co.* (3d Cir. 1955) 222 F.2d 299, 301-302 [rejecting a party’s argument the NLRB has no authority to issue subpoenas before serving a complaint as “wholly without merit”]; *NLRB v. Barrett Co.* (7th Cir. 1941) 120 F.2d 583, 586 [“We are satisfied that the Board’s right (as well as its duty) to investigate, and in the course of its investigation, if need be, to issue subpoenas before it files a complaint, is clear”].

(D.Or. May 3, 2018) 2018 U.S. Dist. LEXIS 85632, at *6-7.)

Judicial enforcement is available where a person fails to comply with an investigative subpoena. (Lab. Code, § 1151, subd. (b); Board regs. 20217(g), 20250(k).) Courts will enforce an ALRB subpoena if the subpoena was properly issued and the records sought are relevant to the charge investigation and identified with sufficient particularity. (*Laflin & Laflin, supra*, 89 Cal.App.3d at pp. 663-664.)

II. The Subpoenas Issued Properly

There is no dispute the six subpoenas comply with Board regulation 20217 and properly were served.

III. The Testimonial Subpoenas Seek Testimony from Witnesses Likely to Have Knowledge Relevant to the Charge Investigation

The General Counsel's five testimonial subpoenas are directed to individuals asserted to have participated in or otherwise were involved in St. Supéry's denial of access to the UFW, which itself constitutes the alleged unfair labor practice under investigation. St. Supéry does not dispute the subpoenaed individuals' involvement in the denial of access. We conclude enforcement of these subpoenas is warranted.

IV. Enforcement of Request Nos. 1 Through 6 of the Subpoena Duces Tecum Is Warranted, But Not Request No. 7

As it concerns request nos. 1 through 6 in the General Counsel's records subpoena, each request is drafted with particularity and seeks information directly relevant to the unfair labor practice allegations under investigation. (*Laflin & Laflin, supra*, 89 Cal.App.3d at pp. 663-664; *NLRB v. G.H.R. Energy Corp.* (5th Cir. 1982) 707 F.2d 110, 113.) Moreover, each request is subject to specific and narrowly defined

timeframes, and none is susceptible to any claim of overbreadth or undue burden. Judicial enforcement of these requests is warranted.

However, we do not authorize enforcement of request no. 7, which broadly seeks any documents St. Supéry “believe[s] to be relevant to [the General Counsel’s] investigation or any documents in support of any defenses [St. Supéry] may wish to raise.” A subpoena only may compel the production of documents specifically and particularly described. While such a request certainly may be made during informal communications with parties to aid in the investigation of a charge, when resorting to the formality of a subpoena the documents sought to be produced must be described with sufficient particularity. This type of “catch-all” demand that the subpoenaed party produce anything it believes is relevant to the General Counsel’s investigation is improper and unenforceable.

Accordingly, we authorize the General Counsel to seek judicial enforcement of its subpoena duces tecum only with respect to request nos. 1 through 6. (*NLRB v. Brown Transport Corp.* (N.D.Ill. 1985) 620 F.Supp. 648, 651 [judicial enforcement of subpoena limited by the NLRB as to certain requests is appropriate, and any contention otherwise “is so lacking in merit as to be frivolous”].)

V. St. Supéry’s Deferral Defense Is Waived and Improper Here

In response to our order to show cause, St. Supéry now contends for the first time that investigation of the underlying charge must be deferred pending the parties’ resort to the grievance-arbitration process set forth in their collective bargaining agreement. We reject this argument.

At the outset, St. Supéry failed to assert this purported objection to the subpoenas in a petition to revoke, as required by Board regulation 20217. To the extent St. Supéry contends its compliance with the subpoenas should be excused based on the pendency of any arbitration process, any such objection is waived. (*King City Nursery, LLC, supra*, ALRB Admin. Order No. 2020-01-P, pp. 6, 11; see *Littlejohn Electrical Solutions, LLC* (2019) 368 NLRB No. 76, *1, fn. 1.)

Furthermore, the question of deferral is premature and not appropriately raised at this time. Before us now is a request by the General Counsel to authorize seeking judicial enforcement of several investigative subpoenas. Deferral is an affirmative defense to be raised by a respondent in its answer to an unfair labor practice complaint or at hearing. (*Richfield Hospitality, Inc.* (2019) 368 NLRB No. 44, *151-152; *Fallbrook Hospital Corp.* (2014) 360 NLRB 644, fn. 2.) It thus constitutes a defense to the merits of the case itself after a complaint has issued. Here, no complaint has yet issued. Rather, the General Counsel is attempting to investigate the unfair labor practice allegations, a task St. Supéry has obfuscated and obstructed throughout by its refusals to cooperate. Moreover, the ALRA vests in the General Counsel final authority over the investigation and prosecution of unfair labor practice charges. (Lab. Code, § 1149; *ALRB v. Superior Court* (2016) 4 Cal.App.5th 675, 683.) At this stage it is not appropriate for the Board to intervene in the General Counsel's investigation of a charge or interfere with her discretion in exercising her investigatory authority.

Finally, we note the party asserting a deferral defense bears the burden of proving deferral is appropriate. (*SBM Site Services, LLC* (2019) 367 NLRB No. 147,

*120-121; *Rickel Home Centers* (1982) 262 NLRB 731.) The Board retains “considerable discretion” in determining whether deferral is appropriate in a given case. (*SBM Site Services, LLC, supra*, 367 NLRB No. 147, *120.) The NLRB has found the following factors relevant when determining deferral to be appropriate:

if the dispute arose within the confines of a long and productive collective-bargaining relationship; if there is no claim of employer animosity to employees’ exercise of protected rights; if the parties’ collective-bargaining agreement provides for arbitration of a very broad range of disputes; if the arbitration clause clearly encompasses the dispute at issue; if the employer asserts its willingness to utilize arbitration to resolve the dispute; and if the dispute is eminently well suited to resolution by arbitration.

(*Ibid.*)

St. Supéry simply asserts the conclusion the parties have a collective bargaining agreement and that deferral to arbitration is appropriate. It has not produced a copy of the agreement to us, nor provided any substantive argument why deferral is appropriate in this matter, other than stating that they deem it so. In addition, the underlying charge suggests animosity towards employees’ exercise of rights protected under the ALRA. The underlying charge alleges St. Supéry has denied the UFW access to agricultural employees supplied to St. Supéry by farm labor contractors. Such employees undoubtedly are within the bargaining unit represented by the UFW, as a matter of law. (Lab. Code, §§ 1140.4, subd. (c), 1156.2; *Gerawan Farming, Inc.* (2018) 44 ALRB No. 1, pp. 47-48, *enfd.* in *Gerawan Farming, Inc. v. ALRB* (2020) 52 Cal.App.5th 141, 193-194.) Denying a union access to bargaining unit employees it represents, and vice-versa,

is a serious allegation and would constitute an unfair labor practice if established. (Lab. Code, §§ 1153, subds. (a), (e).)

ORDER

The request before us reflects a factual situation that unfortunately has become a recurring one. (See *Lily's Green Garden, Inc.*, *supra*, ALRB Admin. Order No. 2021-09; *Coast King Packing, LLC*, *supra*, ALRB Admin. Order No. 2020-16; *Coastal Vineyard Care Associates*, *supra*, ALRB Admin. Order No. 2019-02; *Palma's Produce, Inc.* (Sept. 5, 2018) ALRB Admin. Order No. 2018-11; *Konark Ranches, LLC* (Feb. 7, 2017) ALRB Admin. Order No. 2017-02.) An employer refuses to cooperate with the General Counsel's investigation of a charge. The General Counsel eventually is forced to resort to the formality of administrative subpoenas, which the employer again ignores. The ALRA expressly grants the Board – and thus the General Counsel, too – access to “any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question.” (Lab. Code, § 1151, subd. (a); *D'Arrigo Bros. of California v. United Farmworkers of America* (2014) 224 Cal.App.4th 790, 803.) This includes the authority to issue subpoenas to aid in the investigation of unfair labor practice charges, and to obtain judicial enforcement of such subpoenas when faced with recalcitrant parties. (Lab. Code, § 1151, subd. (b).)

Charged parties must not be permitted to obfuscate or frustrate our administration of the Act through the types of tactics seen here. To fulfill the underlying policies of our Act to achieve the prompt resolution of labor disputes, we encourage the General Counsel to move swiftly to secure compliance with its investigations when

voluntary cooperation is not forthcoming. We will not tolerate tactics designed to delay, frustrate, or outright obstruct the General Counsel's discharge of her duties.

In such circumstances the Act contemplates the prompt enforcement of subpoenas through summary proceedings. (Lab. Code, § 1151, subd. (b).) Notably, like NLRA Section 11(2) [29 U.S.C. § 161(2)], Labor Code section 1151, subdivision (b) vests jurisdiction in a superior court to enforce an ALRB subpoena upon "application" by the Board. (*Goodyear Tire & Rubber Co. v. NLRB* (6th Cir. 1941) 122 F.2d 450, 451; *Cudahy Packing Co. v. NLRB* (10th Cir. 1941) 117 F.2d 692, 694.) Our Legislature thus modeled this provision of our Act on the equivalent NLRA provision, adopting Congress' intent that such proceedings are not bound by the types of formalities required in other civil actions, such as the filing of complaints or service of process. (*Cudahy Packing Co.*, *supra*, 117 F.2d at p. 694.) Indeed, the statute speaks only of a summary proceeding commenced by a Board application, which then is fully and finally disposed of upon issuance of the court's order. (*Goodyear Tire & Rubber Co.*, *supra*, 122 F.2d at p. 451 [noting also the statute refers to issuance of a court "order" and not a "judgment"]; *NLRB v. Frazier* (3d Cir. 1992) 966 F.2d 812, 817-818.) Nor is a subpoena enforcement proceeding to be treated like a pre-trial discovery dispute. (*Frazier*, *supra*, 966 F.2d at pp. 817-818.)

To be clear, Labor Code section 1151, subdivision (b) authorizes the enforcement of ALRB subpoenas in summary, expeditious proceedings; otherwise, such procedures would be subject to delay or other tactics designed to frustrate the prompt discharge of the Board's duties to enforce the Act and the General Counsel's ability to

investigate and prosecute unfair labor practice charges. (*NLRB v. Interstate Dress Carriers, Inc.* (3d Cir. 1979) 610 F.2d 99, 112 [“a district court should, in a § 11(2) enforcement case, act summarily. Otherwise the enforcement proceeding may become a means for thwarting the expeditious discharge of the agency’s responsibilities”]; *Goodyear Tire & Rubber Co., supra*, 122 F.2d at p. 451 [“if the enforcement of valid subpoenas, the issuance of which is a mere incident in a case, were to require all of the formalities of a civil suit, the administrative work of the Board might often be subject to great delay”].)

We GRANT the General Counsel authority to seek prompt judicial enforcement of the underlying subpoenas pursuant to Labor Code section 1151, subdivision (b), with the exception of request no. 7 in the subpoena duces tecum for the reasons previously explained. The General Counsel shall apply for enforcement of the subpoenas in the appropriate superior court within 14 days of the date of this order. If no application is filed by such time, the General Counsel shall file a status report with the Board providing an update regarding the status of its investigation and efforts to obtain the information sought by the subpoenas.

DATED: September 28, 2022

VICTORIA HASSID, Chair

ISADORE HALL III, Member

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member