

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

OCEAN MIST FARMS,) Case No. 2017-CE-006-VIS
)
 Respondent,) (46 ALRB No. 5)
)
 and) ORDER DENYING GENERAL
) COUNSEL’S REQUEST FOR
 JUAN ANTONIO ORTIZ,) ENFORCEMENT OF SUBPOENA
) DUCES TECUM
 Charging Party.)
)
)
) Admin. Order No. 2023-08
)
) (August 28, 2023)
)
 _____)

On July 18, 2023, the General Counsel filed a request for subpoena enforcement with the Board.¹ The General Counsel seeks court enforcement of a subpoena duces tecum issued by the General Counsel on May 31, 2023, pursuant to Labor Code section 1151, subdivision (b), Board regulation 20217, subdivision (g), and Board regulation 20250, subdivision (k).²

The subpoena requests that respondent Ocean Mist Farms (Ocean Mist) produce several categories of records covering the time period of May 31, 2022, to the present, including daily and weekly crew sheets and payroll records for all workers

¹ While the caption on the July 18, 2023 filing states that it is the “Regional Director’s Request for Subpoena Enforcement,” the document was signed by an Assistant General Counsel on behalf of the General Counsel.

² The Board’s regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

performing agricultural work at Ocean Mist; documents identifying all farm labor contractors providing labor for agricultural work at any of Ocean Mist's locations; and documents identifying all custom harvesters or any other entity providing labor for agricultural work at any of Ocean Mist's locations.

The General Counsel states the information sought in the subpoena is necessary to achieve compliance with the notice remedies ordered by the Board in *Ocean Mist Farms* (2020) 45 ALRB No. 5, that Ocean Mist did not file a petition to revoke the subpoena, and that Ocean Mist has not produced any of the information.

In evaluating a request to enforce a subpoena, Board regulation 20250, subdivision (k) requires the Board to exercise its judgment concerning whether “the enforcement of such subpoena or notice would be inconsistent with law or the policies of the Act.” In making this determination, the Board has considered whether the subpoena to be enforced “was regularly issued and the records sought are relevant to the administrative inquiry and identified with sufficient particularity.” (*ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d 651, 663-664; *St. Supéry, Inc.* (Sept. 28, 2022) ALRB Admin. Order No. 2022-06-P, p. 6; *Tri-Fanucchi Farms* (Aug. 11, 2023) ALRB Admin. Order No. 2023-06, p. 3.)

The subpoena fails to meet the requirement of being properly issued because it was issued by the General Counsel, rather than the Regional Director. Authority over compliance matters rests with the Board and the processing and litigation of disputed compliance matters is delegated to the regional directors. (Board regs. 20290-20292; *Lily's Green Garden, Inc.* (May 4, 2023) ALRB Admin. Order No. 2023-04, pp. 1-2; *Ace Tomato Co.* (May 13, 2014) ALRB Admin. Order No. 2014-07, p. 7; *Tri-Fanucchi Farms, supra*, ALRB Admin. Order No. 2023-06, p. 3.)

In this case, the subpoena names the General Counsel as the subpoenaing party

and the attached supporting documentation states “the General Counsel for the ALRB hereby issues this Subpoena Duces Tecum.” The request to enforce the subpoena was also filed by the General Counsel. Because it is the Regional Director who is the proper party to subpoena information and request subpoena enforcement in compliance cases the Board must decline to seek judicial enforcement of the underlying subpoena. The Board takes this action without prejudice to considering enforcement of a subsequent subpoena properly served by the Regional Director.

For the foregoing reasons, we deny the request to seek judicial enforcement of the General Counsel’s subpoena duces tecum. In addition, while we deny the current request for the reasons explained above, we note the lack of evidence supporting the request also poses serious enforcement problems. Specifically, the enforcement request filed with the Board is accompanied by a declaration that summarizes or paraphrases alleged events and communications with Ocean Mist’s counsel, but none of the described communications are included. The Regional Director (or General Counsel) is advised in such circumstances to include all relevant records and writings, including emails exchanged between the parties, with a declaration submitted to the Board. Statements summarizing or describing the parties’ statements, assertions, or positions on disputed issues are improper and may not be relied upon; the writings themselves are the best evidence of their contents. (Evid. Code, § 1523, subd. (a) [“oral testimony is not admissible to prove the content of a writing”].) The provision of all relevant exhibits with a subpoena, or other type of, enforcement request ensures a complete record and efficient review of such matters.

Finally, we note that Ocean Mist has had nearly two years to comply with the Board’s order in this matter. However, since at least January 2023 it appears that Ocean Mist has openly engaged in dilatory tactics instead of cooperating with regional staff so that the

Board's notice remedies can be completed. Should this pattern of behavior continue, the Board is prepared to seek other ways of informing Ocean Mist's agricultural employees about their rights under the Agricultural Labor Relations Act (in addition to the noticing we ordered previously).

Ocean Mist violated our Act when it unlawfully suspended the three workers involved in this matter in retaliation for exercising protected rights. (*Ocean Mist Farms, supra*, 46 ALRB No. 5, pp. 1-2.) It sought judicial review of our order, and its petition was summarily denied. Now it must comply with our ordered remedies. The timely implementation of notice remedies is essential as delays to implementation inevitably dilute the impact of those remedies. Thus, delay and obstruction of the Board's remedies cannot – and will not – be tolerated. The Board encourages the Regional Director to examine all avenues of enforcement, including a request for court enforcement of the Board's order under Labor Code section 1160.8, in order to achieve Ocean Mist's prompt compliance with our ordered remedies. (See NLRB Casehandling Manual, Part 3, § 10606.3 [advising a region should recommend commencing enforcement proceedings when “it appears likely that a respondent will not comply with the Board's order ... A respondent may demonstrate unwillingness to comply by its response to inquiries, requesting repeated conferences or otherwise delaying”].)³

³ Chair Hassid writes separately here to note the old adage attributed to Albert Einstein that the definition of insanity is doing the same thing over and over and expecting a different result. Ocean Mist's tactics in this proceeding are not new, and our Board has been down this road with this respondent and its counsel previously. Following the Board's order in *Ocean Mist Farms* (2015) 41 ALRB No. 2 and the exhaustion of multiple levels of judicial review unsuccessfully pursued by Ocean Mist, it thereupon adopted a strategy of further delay and a refusal to cooperate with our regional staff's attempt to obtain compliance with our order. Such tactics included ignoring informal requests for documents and information relevant to effectuating our notice remedies and a subsequent refusal to respond to a subpoena seeking such information without even filing

DATED: August 28, 2023

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member

Cinthia N. Flores, Member

a petition to revoke. After protracted delays resulting from Ocean Mist’s behavior, the region eventually sought authorization from the Board to commence a superior court enforcement proceeding under section 1160.8. Ocean Mist’s conduct in this matter is a perpetuation of the same pattern of conduct we previously encountered, and it cannot be tolerated. Notably the National Labor Relations Board has staked out a strong stance on expansive remedies (See *Noah’s Ark Processors, LLC dba WR Reserve* (2023) 372 NLRB No. 80, *4 [detailing potential remedies NLRB will consider in cases involving respondents who have shown repeated or egregious disregard for employees’ rights under the National Labor Relations Act]; *Thryv, Inc.* (2022) 372 NLRB No. 22, *6 [clarifying that the NLRB’s standard make whole remedy must ensure workers who are victims of labor law violations are compensated for all “direct or foreseeable pecuniary harm” suffered as a result of those unfair labor practices].)

The Chair will work with the Board to identify means by which to strengthen our remedial orders and ensure efficient compliance. This should include consideration of options through case law, regulatory and statutory proposals, and consideration of other tools, such as publicizing violations of our Act and providing notice of such violations to other government or enforcement agencies. (See Johnson, *Regulation by Shaming: Deterrence Effects of Publicizing Violations of Workplace Safety and Health Laws* (June 2020) 110 Am. Econ. Rev. 1866, available at: <https://pubs.aeaweb.org/doi/pdfplus/10.1257/aer.20180501>>.)