

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

TERRANOVA FARMS, ) Case No. 2023-CE-019-VIS  
)  
Charged Party, )  
)  
and ) ORDER GRANTING GENERAL  
) COUNSEL’S REQUEST FOR  
) SUBPOENA ENFORCEMENT  
DENIS ULISES RIVAS SERRANO, )  
) Admin. Order No. 2024-01  
Charging Party. )  
) (January 17, 2024)  
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On December 29, 2023, 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 an investigative subpoena duces tecum issued to charged party Terranova Farms (Terranova). (Lab. Code, § 1151, subd. (b); Board regs. 20217, subd. (g), 20250, subd. (k).)<sup>1</sup> Terranova did not file any response to the General Counsel’s request. (Board reg. 20250, subd. (k).) For the reasons discussed below, we GRANT the request and urge the General Counsel to seek prompt enforcement of the subpoena in accordance with Labor Code section 1151, subdivision (b).

**PROCEDURAL BACKGROUND**

Agricultural worker Denis Ulises Rivas Serrano filed the underlying unfair labor practice charge on July 21, 2023. The charge alleges that beginning on July 4, 2023,

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

Terranova, through its agent MidVal Ag. Inc., threatened to terminate and later failed to rehire Rivas Serrano after he complained about lack of shade and lack of nearby, accessible restrooms.

On August 10, General Counsel staff contacted Terranova’s counsel and requested eighteen categories of documents to aid in the investigation of the unfair labor practice charge. On August 29, Terranova produced some, but not all, of the requested documents. On October 27, the General Counsel issued a subpoena duces tecum for records relating to the investigation of the charge.

Terranova filed a petition to revoke the subpoena on November 3, 2023, which the General Counsel opposed. On November 21, 2023, an administrative law judge (ALJ) issued an order denying the petition to revoke the subpoena duces tecum and directing that documents responsive to the subpoena be produced by close of business on December 21, 2023. Terranova did not seek to appeal the ALJ’s order and did not produce any records by the December 21 deadline. This enforcement request from the General Counsel followed.<sup>2</sup>

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<sup>2</sup> We remind the General Counsel when requesting Board authorization to commence judicial enforcement proceedings to include with its request all communications and information relevant to its efforts to obtain records from another party. (*Norman’s Nursery, Inc.* (Nov. 27, 2023) ALRB Admin. Order No. 2023-18, p. 2, fn. 2; *Ocean Mist Farms* (Aug. 28, 2023) ALRB Admin. Order No. 2023-08, p. 3; *San Joaquin Tomato Growers, Inc.* (Mar. 21, 2013) ALRB Admin. Order No. 2013-16, pp. 2-3.)

## DISCUSSION

### I. The ALRB's Subpoena Power and Judicial Enforcement

The Agricultural Labor Relations Act (ALRA or Act)<sup>3</sup> expressly grants the Board (and General Counsel) 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).) Board regulation section 20217, subdivision (b) requires that investigative subpoenas seek materials that are relevant to the subject matter of the investigation or reasonably calculated to lead to the discovery of admissible evidence.

Judicial enforcement is available when a person fails to comply with an investigative subpoena. (Lab. Code, § 1151, subd. (b); Board regs. 20217, subd. (g), 20250, subd. (k).) In such circumstances the Act contemplates the prompt enforcement of subpoenas through summary proceedings. (Lab. Code, § 1151, subd. (b).) Notably, like National Labor Relations Act (NLRA)<sup>4</sup> 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

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

<sup>4</sup> 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].)

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.)

In such a proceeding, “a subpoena enforcement order should issue if it appears the administrative subpoena was regularly issued and the records sought are relevant to the administrative inquiry and identified with sufficient particularity.” (*Laflin & Laflin, supra*, 89 Cal.App.3d at p. 664.)

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.” (*Laflin & Laflin, supra*, 89 Cal.App.3d at pp. 663-664; *St. Supéry, Inc. dba St. Supéry Vineyards & Winery* (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.)

## **II. The Subpoena Issued Properly**

There is no dispute the subpoena complies with Board regulation 20217 and was properly served.

## **III. Enforcement of the Subpoena Duces Tecum Is Warranted**

The General Counsel seeks Terranova’s records to determine if Terranova, through its farm labor contractor, violated the Act by threatening to terminate Rivas

Serrano and failing to rehire him for engaging in protected concerted activity when he complained about working in high heat, lack of shade and lack of accessible restrooms.

The subpoenaed records are material and relevant to the issues in this investigation. The items in the subpoena are described with sufficient particularity to put Terranova on notice as to what is being requested and are not overbroad as the scope is appropriately tailored to the nature of the 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. When this matter was before the ALJ, Terranova failed to substantiate its claim that responding to the subpoena was unduly burdensome with the required evidence to show the “quantum of work required” to respond to the subpoena. (*W. Pico Furniture Co. v. Superior Court* (1961) 56 Cal.2d 407, 417.) Terranova made no showing that the subpoena would “seriously disrupt its normal business operations.” (*NLRB v. Carolina Food Processors* (4th Cir. 1996) 81 F.3d 507, 513.) The fact that “compliance with the subpoenas may require the production of thousands of documents is also insufficient to establish burdensomeness.” (*G.H.R. Energy Corp., supra*, 707 F.2d at p. 114.)

The ALJ properly rejected the argument that the subpoena is overbroad. Government inquiry into business affairs is reasonable “if the inquiry is within the authority of the agency, the demand is not too indefinite and the information sought is reasonably relevant.” (*United States v. Morton Salt Co.* (1950) 338 U.S. 632, 652.) The subpoena in this matter meets that standard.

The ALJ also properly rejected Terranova's claim that some of the documents were protected by attorney client privilege. The Board's regulations require parties to produce privilege logs where records are withheld on the basis of a claim of privilege. (Board reg. 20217, subd. (d).) Terranova failed to provide the required privilege log.

We acknowledge that Terranova stated in its petition to revoke the subpoena duces tecum that it had already produced over 1,000 pages of documents responsive to multiple subpoena items when it responded to the General Counsel's August 10, 2023 letter. According to the General Counsel's opposition to that petition, those documents consisted only of Terranova's employee handbook and policies (542 pages) and timecards for the crew in question (772 pages). Notably, Terranova has failed to provide any attestation that it has conducted a reasonable and diligent search for responsive records and that either all responsive documents in its possession, custody, or control have been produced, or that it is not in possession of any further responsive records.

The General Counsel's opposition to Terranova's petition to revoke represents that Terranova did provide some documents responsive to 9 of the 18 categories described in its August 10, 2023 letter, but that Terranova failed to fully respond to all requests or provide a reason for not doing so. As there remains a continuing dispute as to which documents have been produced, the application for judicial enforcement should include a clear and detailed description of which documents have been received and which have not been produced, including specifically what

categories of records described in the subpoena remain outstanding.

For the reasons discussed above, judicial enforcement of the General Counsel's investigative subpoena is warranted.

**ORDER**

The General Counsel's request for authority to seek judicial enforcement of its investigative subpoena duces tecum to charged party Terranova Farms pursuant to Labor Code section 1151, subdivision (b) is GRANTED. The Board urges the General Counsel to seek prompt judicial enforcement of its subpoena.

DATED: January 17, 2023

VICTORIA HASSID, Chair

BARRY D. BROAD, Member

RALPH LIGHTSTONE, Member

CINTHIA N. FLORES, Member