

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

EDWIN BRASIL DAIRY,	)	Case No. 2023-CE-013-VIS
	)	
Charged Party,	)	
	)	ORDER GRANTING GENERAL
and	)	COUNSEL’S REQUEST FOR
	)	SUBPOENA ENFORCEMENT
MIGUEL CRUZ ROSENDO,	)	
	)	Admin. Order No. 2024-03
Charging Party.	)	
	)	(March 12, 2024)
_____	)	

On February 23, 2024, 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 ad testificandum (subpoena) issued to charged party Edwin Brasil Dairy (Dairy). The subpoena directed that Dairy owner Edwin Brasil (Brasil) appear for an interview relating to the investigation of an unfair labor practice charge. The Dairy did not file a petition to revoke the subpoena, and Brasil did not comply with the subpoena.

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 Miguel Cruz Rosendo filed the underlying unfair labor practice charge on June 29, 2023. The charge alleges that, beginning in January 2023, the charging party and other Dairy workers raised concerns with the Dairy’s owner, Brasil,

about heavy workloads and working overtime. The charging party and others asked Brasil about hiring an additional worker to help alleviate the heavy workload. The charge further alleges that on June 20, 2023, Brasil terminated Rosendo in retaliation for speaking out about workplace concerns.

On January 12, 2024, the General Counsel issued a subpoena directing that Brasil appear on February 1, 2024, at 9:30 a.m. for an interview relating to the investigation of the charge.

The charged party did not file a petition to revoke the subpoena, and Brasil did not appear for the interview. On February 2, 2024, an Assistant General Counsel reached out to a representative at the Dairy via email and asked whether Brasil was refusing to be interviewed. Later that day the Dairy's representative replied via email and confirmed that Brasil refused to be interviewed.

The General Counsel filed this enforcement request on February 23, 2024. The Dairy did not file a response to the General Counsel's request. (Cf. Board reg. 20250, subd. (k).)<sup>1</sup>

## **DISCUSSION**

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

The Agricultural Labor Relations Act (ALRA or Act)<sup>2</sup> expressly grants the Board (and General Counsel) access to "any evidence of any person being investigated or

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

<sup>2</sup> The ALRA is codified at Labor Code section 1140 et seq.

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 (a) authorizes the General Counsel to issue and serve investigative subpoenas to aid in her investigation of unfair labor practice charges. Both the Act and our regulations expressly authorize subpoenas to compel the attendance and testimony of an individual, including during the investigative stage before a complaint has issued. (Lab. Code, § 1151, subd. (a); Board reg. 20217, subd. (a); *Coastal Vineyard Care Associates* (June 11, 2019) ALRB Admin. Order No. 2019-02, p. 2; see also *NLRB v. North Bay Plumbing* (9th Cir. 1996) 102 F.3d 1005, 1008; *NLRB v. Charney* (C.D. Cal. Apr. 28, 2016) 2016 U.S. Dist. LEXIS 203874, \*5-7.) A person who does not intend to comply with a subpoena must file a petition to revoke with the Board’s Executive Secretary. (Board reg. 20217, subd. (d).)

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>3</sup> Section 11(2) [29 U.S.C. § 161(2)], Labor Code

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<sup>3</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

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.)

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 information sought is relevant to the investigation of the charge allegation. (See *ALRB v. Laflin & Laflin* (1979) 89 Cal.App.3d 651, 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**

The Board has reviewed the General Counsel’s request for enforcement and supporting documents. On the record before the Board, the subpoenas were issued in accordance with the provisions of Board regulation 20217.

## **III. Enforcement of the Subpoena Ad Testificandum Is Warranted**

The General Counsel states that the subpoenaed testimony is relevant and necessary to her investigation of the unfair labor practice charge filed against the Dairy.

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Cal.App.3d 651, 663; see Lab. Code, § 1148 [stating the ALRB shall follow applicable precedent under the NLRA.]

As part of the unfair labor practice investigation, General Counsel seeks to interview Dairy owner, Brasil, a percipient witness to the allegations in the underlying charge. Brasil has first-hand knowledge about the events surrounding the charging party’s termination—information that is clearly relevant to the investigation. The subpoena provided adequate time for Brasil to prepare for the interview. Given Brasil’s failure to appear for an interview on February 1, 2024, and the email from a Dairy representative stating that Brasil refuses to be interviewed at this time, judicial enforcement of the subpoena is necessary to compel him to do so.

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 ad testificandum to charged party Edwin Brasil Dairy pursuant to Labor Code section 1151, subdivision (b) is GRANTED. The Board urges the General Counsel to seek prompt judicial enforcement of its subpoena.<sup>4</sup>

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<sup>4</sup> In addition to, or in lieu of, seeking enforcement pursuant to section 20250, subdivision (k), the General Counsel may apply to the chief administrative law judge, or the assigned administrative law judge, for appropriate sanctions to be imposed against a charged party based on the charged party’s failure to comply with an investigative subpoena. (Board reg. 20217, subd. (h).)

DATED: March 12, 2024

VICTORIA HASSID, Chair

ISADORE HALL III, Member

BARRY D. BROAD, Member

CINTHIA N. FLORES, Member