

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HO SAI GAI FARMS, INC.,	)	Case Nos. 2024-CE-33, et al.
	)	
Charged Party,	)	ORDER DENYING WITHOUT
	)	PREJUDICE GENERAL COUNSEL’S
and,	)	REQUEST FOR SUBPOENA
	)	ENFORCEMENT
UNITED FARMWORKERS OF	)	
AMERICA,	)	
	)	Administrative Order No. 2024-20
Charging Party.	)	
	)	(June 10, 2024)
	)	

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On May 20, 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 duces tecum issued to charged party Ho Sai Gai Farms, Inc. (HSG). (Lab. Code, § 1151, subd. (b); Board regs. 20217, subd. (g), 20250, subd. (k).)<sup>1</sup> HSG did not file a response to the General Counsel’s request. (Board reg. 20250, subd. (k).) For the reasons discussed below, we DENY the request without prejudice.

**BACKGROUND**

Between April 2 and April 10, 2024, the United Farm Workers of America (UFW) filed four unfair labor practice (ULP) charges alleging that HSG interrogated,

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

surveilled, and threatened agricultural employees after the UFW filed a majority support petition (MSP) pursuant to Cal. Lab. Code section 1156.37.

General Counsel staff immediately began an investigation of the ULP charges. On April 12, 2024, the General Counsel served a pleading-captioned document in support of an investigatory subpoena duces tecum on HSG, stating that the documents demanded must be produced by April 22. The General Counsel states that HSG did not file a timely petition to revoke the subpoena and did not provide any responsive documents.

## **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 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.

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

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

National Labor Relations Act (NLRA)<sup>3</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 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 Board Cannot Determine Whether the Subpoena Was Properly Issued**

Upon review of the documents submitted by the General Counsel in

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

support of the enforcement request, we are unable to determine whether the subpoena was regularly issued and served. Exhibit “E” to the declaration in support of the enforcement request purports to be a copy of the subpoena served on HSG. However, Exhibit “E” consists only of the pleading captioned list of document requests and the declaration alleging good cause for the requests. However, there is no actual subpoena form included.<sup>4</sup> If the subpoena form was not served on HSG, then the subpoena is defective, was not properly issued or served, and the Board is unable to grant the enforcement request based on the documents submitted.

### **ORDER**

The General Counsel’s request for authorization to seek judicial enforcement of its investigative subpoena duces tecum to charged party Ho Sai Gai Farms, Inc. pursuant to Labor Code section 1151, subdivision (b) is DENIED without prejudice. If the General Counsel did properly serve the ALRB’s subpoena form on the charged party, the General Counsel shall submit the subpoena to the Board with a declaration attesting to such facts within five days of the date of this order.

IT IS SO ORDERED.

DATED: June 10, 2024

Victoria Hassid, Chair

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<sup>4</sup> The subpoena form can be found at <https://www.alrb.ca.gov/wp-content/uploads/sites/196/2019/08/subpoena20190815.pdf>.

Isadore Hall, III, Member

Barry Broad, Member

Ralph Lightstone, Member

Cinthia Flores, Member