

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

HO SAI GAI FARMS, INC.,	)	Case Nos. 2024-CE-33, et al.
	)	
Charged Party,	)	ORDER GRANTING GENERAL
	)	COUNSEL’S REQUEST FOR
and,	)	SUBPOENA ENFORCEMENT
	)	
UNITED FARMWORKERS OF	)	
AMERICA,	)	
	)	Administrative Order No. 2024-22
Charging Party.	)	
	)	(July 9, 2024)
	)	

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On June 13, 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 GRANT the request.

**BACKGROUND**

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

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

and threatened agricultural employees after the UFW filed a majority support petition (MSP) pursuant to Labor Code section 1156.37.<sup>2</sup>

On April 26, 2024, the General Counsel served an investigatory subpoena duces tecum on HSG, stating that the documents demanded must be produced by May 13, 2024. 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>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.

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, subd. (d).) Failure to file a petition to

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<sup>2</sup> In that majority support proceeding, the regional director determined the UFW established majority support, and the executive secretary issued a certification designating the UFW as the exclusive collective bargaining representative of HSG’s agricultural employees on April 3. HSG subsequently filed objections to the certification, and the Board set several of those objections for hearing. (*Ho Sai Gai Farms, Inc.* (Apr. 18, 2024) ALRB Admin. Order No. 2024-09.) The hearing is ongoing at this time.

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

revoke waives any objections to the subpoena. (*King City Nursery, LLC* (Jan. 9, 2020) ALRB Admin. Order No. 2020-01-P, pp. 6, 11; *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* (D.Or. May 3, 2018) 2018 U.S. Dist. LEXIS 85632, \*6-7.)

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 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

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<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].)

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 Complies with the Board’s Regulations**

The General Counsel’s April 26, 2024 subpoena duces tecum was properly issued and served. The records sought by the subpoena are relevant to the General Counsel’s investigation of the underlying unfair labor practice charges and are described with sufficient particularity.

## **III. HSG Waived Any Objections to the Subpoena**

HSG did not file a petition to revoke the subpoena and therefore waived any objections to it. HSG also failed to file any response to the General Counsel’s request for subpoena enforcement.<sup>5</sup> While the pleading captioned list of document requests in

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<sup>5</sup> We acknowledge HSG’s counsel emailed ALRB Assistant General Counsel Mary Perez on April 24 regarding a prior subpoena duces tecum identical to the current subpoena that was issued on April 12 but subsequently withdrawn. HSG’s counsel asserts in that email that the subpoena is premature and improper while a question concerning whether HSG’s employees are agricultural employee subject to the Board’s jurisdiction is being litigated in the separate majority support certification objections proceeding. (See *Ho Sai Gai Farms, Inc., supra*, ALRB Admin. Order No. 2024-09, p. 2.) To the extent HSG maintains that position with respect to the current subpoena, we reject it. HSG’s contention regarding the Board’s jurisdiction over the subject employees is not a basis for refusing to comply with the subpoena nor does it excuse HSG’s continued noncompliance with it. (*Myers v. Bethlehem Shipbuilding Corp.* (1938) 303 U.S. 41, 49-51 [party cannot avoid unfair labor practice proceedings based on claim NLRB lacks

Exhibit E contains the wrong due date (April 22, 2024), this appears to be a typo. The subpoena form itself clearly indicates that May 13, 2024 was the intended date to provide responsive documents. Despite this harmless error, the request for enforcement meets the standards discussed above. (*Person v. Farmers Insurance Group of Companies* (1997) 52 Cal.App.4th 813, 818, fn. 6 [enforcing subpoena although subpoena stated the incorrect year in the response date].)

### **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 GRANTED.  
IT IS SO ORDERED.

DATED: July 9, 2024

Victoria Hassid, Chair

Isadore Hall, III, Member

Barry Broad, Member

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jurisdiction over it]; *Saginaw Chippewa Indian Tribe v. NLRB* (E.D. Mich. 2011) 838 F.Supp.2d 598, 600 [same].)

Ralph Lightstone, Member

Cynthia Flores, Member