

STATE OF CALIFORNIA

AGRICULTURAL LABOR RELATIONS BOARD

OCEAN MIST FARMS,) Case No. **2017-CE-006-VIS**
)
Respondent,) (46 ALRB No. 5)
)
and)
) **ORDER REGARDING REGIONAL**
) **DIRECTOR’S REQUEST FOR**
JUAN ANTONIO ORTIZ,) **CLARIFICATION OF BOARD ORDER**
) **46 ALRB NO. 5**
Charging Party.)
) **Admin. Order No. 2026-03**
)
)
) (March 18, 2026)

Background

In *Ocean Mist* (2020) 46 ALRB No. 5, the Agricultural Labor Relations Board (ALRB or Board) found Respondent Ocean Mist Farms (Ocean Mist), through its farm labor contractor (FLC), Valley Pride, Inc., violated the Agricultural Labor Relations Act (ALRA)¹ by retaliating against three workers after they engaged in a work stoppage for safety reasons.² In this matter, and in a previous matter (*Ocean Mist Farms* (2015) 41 ALRB No. 2), Ocean Mist unsuccessfully argued Valley Pride was a custom harvester,

¹ The ALRA is codified at Labor Code section 1140 et seq.

² The Board ordered Ocean Mist to cease and desist from engaging in the unlawful conduct, make the discriminatees whole for all wages and economic losses, and carry out the Board’s standard and well-established noticing remedies. These noticing remedies include posting a Notice to Agricultural Employees (Notice) in the workplace, mailing a copy of the Notice to agricultural employees, providing copies of the notice to new hires, and arranging for a representative of Respondent or a Board agent to distribute and read the Notice, to all employees then employed. Ocean Mist filed a petition for review of the Board’s decision and order that was summarily denied by the Sixth District Court of Appeal on October 19, 2021. (Case No. H048797.) Ocean Mist partially complied with the Board’s order, but has failed to carry out the notice reading remedy.

and Valley Pride, rather than Ocean Mist, should bear liability for any unfair labor practices. The Board concluded Valley Pride was an FLC under Board precedent, and therefore, under the ALRA, Valley Pride’s employees were the agricultural employees of Ocean Mist.³

ALRB staff attempted to arrange dates and times to read the Board’s notice to inform employees about the violation of the law and answer questions about employee rights; however, Ocean Mist, beginning around 2023, stated it no longer used the services of Valley Pride, and it now contracted with Foothill Packing, Inc. (Foothill), and Premier Packing of California, Inc. (Premier), claiming, without providing any evidence, the latter two entities were custom harvesters whose employees were therefore not employees of Ocean Mist under the ALRA and should not be subject to any notice reading

After unsuccessful efforts to achieve full voluntary compliance with the Board’s notice reading remedy, the ALRB’s Regional Director issued a subpoena duces tecum on October 16, 2024, requiring Ocean Mist produce documents, including crew sheets, payroll records, and documents identifying farm labor contractors and custom harvesters, or any other entities providing agricultural labor at all, of Ocean Mist’s locations.

³ Section 1140.4, subdivision (c) of the ALRA provides:

The term “agricultural employer” shall be liberally construed to include any person acting directly or indirectly in the interest of an employer in relation to an agricultural employee, any individual grower, corporate grower, cooperative grower, harvesting association, hiring association, land management group, any association of persons or cooperatives engaged in agriculture, and shall include any person who owns or leases or manages land used for agricultural purposes, but shall exclude any person supplying agricultural workers to an employer, and farm labor contractor as defined by [Labor Code] Section 1682, and any person functioning in the capacity of a labor contractor. **The employer engaging such labor contractor or person shall be deemed the employer for all purposes under this part.** (Emphasis added.)

Ocean Mist filed a petition to revoke the subpoena. Although Ocean Mist argued it should not have to comply because the subpoena sought information about workers purportedly employed by custom harvesters, it did not provide any evidence to substantiate its custom harvester claim. The petition to revoke was denied, but Ocean Mist continued to refuse to provide the subpoenaed documents. On May 29, 2025, the Regional Director filed with the Board a request for subpoena enforcement along with a request to seek court enforcement of the Board's order in *Ocean Mist Farms*, supra, 45 ALRB No. 5. On June 26, 2025, the Board granted the requests. (*Ocean Mist Farms*, June 26, 2025, Board Admin. Order 2025-06.)

On July 14, 2025, the Regional Director filed a request for injunctive relief to enforce the order and subpoena with Monterey County Superior Court. On August 22, 2025, the court issued a minute order enforcing the Board's order and subpoena. (Superior Court Case No. 25CV003585.)

On October 2, 2025, Ocean Mist partially complied with the minute order by producing payroll records for its direct hires, for an entity named Dominguez Farms (which Ocean Mist admits is an FLC), and contracts with Foothill and Premier. Ocean Mist failed to provide payroll records for Foothill and Premier, and it failed to make all its agricultural employees available for the reading and posting remedies.

On November 17, 2025, the Regional Director filed a Motion for an Order to Show Cause Re: Contempt and Sanctions with Monterey County Superior Court against Ocean Mist and its attorney. The motion was heard on December 12, 2025. The Court ordered Ocean Mist to produce payroll records for Foothill and Premier by February 13, 2026. However, the Court denied the request for contempt and sanctions, finding "that Petitioner had not shown that Respondent or its attorney Howard Sagaser

were in contempt of the Court’s Minute Order of August 22, 2025, enforcing Board Order 46 ALRB No. 5 because Petitioner did not meet its burden to show that employees of Foothill Packing and Premier Packing were agricultural employees of Ocean Mist.” (Order on Petitioner State of California Agricultural Labor Relations Board’s Motion for Sanctions and Contempt, Monterey County Superior Court, Case No. 25CV003585, Dec. 18, 2025.)

On March 2, 2026, when Ocean Mist still had not produced payroll records for Foothill and Premier, the Court issued an “Order to Show Cause Regarding Contempt for Failure to Comply with Prior Court Orders,” and ordered counsel for Ocean Mist as well as Ocean Mist’s CEO to appear for a hearing on April 3, 2026.

Current Matter Before the Board

On February 12, 2026, the Regional Director filed a request that the Board clarify its Decision and Order, *Ocean Mist Farms, supra*, 46 ALRB No. 5, and hold that all agricultural workers hired by respondent’s farm labor contractors are employees of respondent who must be noticed pursuant to the Board’s ordered remedy in this matter. The Regional Director requests the Board preclude Ocean Mist from arguing that the entities providing labor are custom harvesters, and also requests the Board issue evidentiary sanctions against Ocean Mist for its lack of cooperation with the Regional Director’s subpoenas. The Regional Director argues the Board’s clarification will allow the Regional Director to enforce the Board’s order in the courts as necessary.

Under Board regulation section 20250, subdivision (k) and section 20170, Ocean Mist had until February 20, 2026 to file a response to the Regional Director’s

request.⁴ On February 24, 2026, Ocean Mist filed an untimely objection to the Regional Director's request.

The Board **GRANTS** the Regional Director's motion for clarification of its previous orders.

Discussion

Just as it has consistently done in the enforcement proceeding before the Monterey County Superior Court, Ocean Mist submits another late filing. Regardless, the Board is compelled to address the issue on the merits in light of Respondent's continued intransigence and efforts to avoid its obligation to allow noticing of the standard ALRB notice reading remedy to the employees working on the farm where the unfair labor practice occurred.

The notice reading has been found to be an appropriate remedy in this case and is not in dispute.⁵ The sole dispute at this juncture is *who* are employees of the agricultural employer for purposes of receiving the notice reading remedy.

Ocean Mist repeats the same assertion it has made unsuccessfully in 2015, in 2020, and at each juncture of this case: that it does not employ agricultural employees subject to the Board's jurisdiction. Rather than provide evidence to support this claim,

⁴ The Board's regulations are codified at California Code of Regulations, title 8, section 20100 et seq.

⁵ Indeed, the noticing remedies ordered by the Board, including the reading remedy, are a firmly-established part of the Board's standard unfair labor practice remedies. The noticing remedies are not a technicality but "serve the important functions of informing workers of the outcome of the unfair labor practice proceedings and to answer their questions about the notice and the rights guaranteed to them by the Act." (*United Farm Workers of America (Lopez)* (2018) 44 ALRB No. 6, p. 15.)

Ocean Mist's counsel continues to evade his obligation to ensure that his client complies with the Board's order by asking to be taken on his word that the entities providing Ocean Mist's farm labor are custom harvesters⁶. (See *Rincon Pacific, LLC* (2020) 46 ALRB No. 4, pp. 7-8, fn. 7 [citing *Gdowski v. Gdowski* (2009) 175 Cal.App.4th 128, p. 139 ["Statements and arguments by counsel are not evidence"]; *Davenport v. Blue Cross of California* (1997) 52 Cal.App.4th 435, p. 454 ["These unsworn averments in a memorandum of law prepared by counsel do not constitute evidence"].)

Ocean Mist states it does not have payroll records from Foothill and Premier. (Ocean Mist Farms' Objection to Regional Director's Request, pp. 3-4.) The Board will not consider this argument any further as the superior court has already ordered Ocean Mist to produce the records. (Minute Order dated August 22, 2025.) Moreover, this claim is violative of both the Labor Code and the provisions of Ocean Mist's own contracts with the two entities. Notably Labor Code section 1695.55(b) requires "Each grower entering into a contract with a farm labor contractor shall retain a copy of the payroll record provided by the contractor for a period of three years after the contract has ended." Additionally, the contracts with Foothill and Premier attached to the Regional Director's request for clarification as exhibits O and P both contain provisions requiring the contactors to provide employment records upon Ocean Mist's request. (See,

⁶ See e.g, Declaration of Michael I. Marsh ISO Regional Director's Request for Clarification, paragraphs 13, 21 and 37. See also ALJ's Ruling and Order on Pending Petition Revoke, November 20, 2024. p. 3 ("The problem here is that determining whether someone is an agricultural employee or employer requires an evaluation of facts measured against the definitional standards in Labor Code section 1140.4. However, Respondent is withholding information needed to make that determination and instead asking to be taken on its word that the Regional Counsel seeks more than she needs or is entitled to obtain.")

Agreement for Farm Labor Contracting Services Between Ocean Mist Farms and Foothill Packing, Inc., provision 6(d)(6), page 4; Agreement for Farm Labor Contracting Services Between Ocean Mist Farms and Premier Packing of California, Inc., provision 6(f)(6).)

Ocean Mist's objection to the Regional Director's request includes a lengthy discussion regarding the distinction between the jurisdiction of the ALRA and the National Labor Relations Act (NLRA) (see Respondent's Objection pgs. 7-11). This discussion is not relevant to the issue of whether the farmworkers who are working in Ocean Mist's fields under contract with Foothill Packing and Premier Packing are subject to the notice reading in this matter.

Ocean Mist further argues that under the Regional Director's request, the Board would have to address the issue of whether Foothill and Premier are custom harvesters. The designation "custom harvester" is a narrow exception to the general rule that workers supplied to a grower are deemed employees of the grower for purposes of the ALRA, including remedial noticing. (Lab. Code, § 1140.4, subd. (c).) The burden is on the proponent of the exception to show that it applies.

The primary inquiry in determining whether an entity is a custom harvester is, "whether it provides additional services or has other characteristics to place it outside the definition of a labor contractor." (*Ocean Mist Farms, supra*, 41 ALRB No. 2, at ALJ Dec. p. 18.) "Additional services" include the provision of costly or specialized equipment, full control over the manner in which the harvest is conducted, and full management of packing and shipping. A showing that an entity exercises total control over the terms and conditions of its workers' employment does not strongly support the conclusion that the entity is a custom harvester, because farm labor contractors frequently exercise such control. (*George Amaral Ranches, Inc.* (2014) 40 ALRB No. 10, at ALJ

Dec. p. 27 [discounting the fact that contractor “had control over hiring, firing, and discipline on the grounds that such functions are typical farm labor contractor functions”].) Generally, a “custom harvester has been found only when the harvesting entity has provided significant additional services, such as full management responsibility or packing and shipping.” (*San Joaquin Tomato Growers, Inc.* (1993) 19 ALRB No. 4, p. 11.)

At all stages of this proceeding, it was Ocean Mist’s burden to show that employees of Foothill and Premier were not agricultural employees of Ocean Mist’s. Ocean Mist raised custom harvester status as an affirmative defense to the Regional Director’s efforts to achieve compliance with the Board’s order, thus it bore the burden of production and the ultimate burden of proof on this issue. (*Ocean Mist Farms, supra*, 46 ALRB No. 5, ALJ Dec. p. 18, fn. 53, citing *Sunrise Mushrooms, Inc.* (1996) 22 ALRB No. 2, pp. 7-8; see also Cal. Evid. Code §§ 110; *Jordan Brothers Ranch* (1983) 9 ALRB No. 41 pp. 3-4 [indicating that burden of production is on party asserting custom harvester status (employer that asserted employees worked directly for a custom harvester submitted insufficient evidence to prove custom harvester status)]; *Rainbow Tours, Inc.* (1986) 280 NLRB 166 [burden on employer asserting affirmative defense in compliance matter].) As the Board stated in Administrative Order No. 2025-06, Ocean Mist’s arguments about the status of the employees of Foothill and Premier have been waived given its failure to present any evidence to support its defense. (*Ocean Mist Farms*, (June 26, 2025) Admin. Order 2025-06, p. 9).

Ocean Mist had opportunities to present evidence to support its challenge to the status of the employees of Premier and Foothill, including following the issuance of the Regional Director’s subpoena on October 16, 2024. Ocean Mist filed a petition to

revoke the subpoena on October 25, 2024, and it failed to meet its burden of providing evidence to support its claims regarding Premier and Foothill at that time. Ocean Mist again conclusively stated, without any evidence, these two entities were custom harvesters when it filed its opposition to the Regional Director's request that the Board approve a subpoena enforcement action in the Court. (Ocean Mist's Oppo to Regional Director's Request for Enforcement, June 5, 2025.)

It was only after the Monterey County Superior Court enforced the Regional Director's subpoena that Ocean Mist produced its contracts with Foothill and Premier. However, to date, it has still not fully complied with the subpoena. Ocean Mist's strategy to evade compliance with the Board's order is plain. Ocean Mist asserted its claim as a defense to compliance but failed to substantiate it with any evidence even to the point of defying a subpoena and a court order enforcing it. When, as in this case, the region seeks to effectuate the Board's remedy with respect to the workers supplied by Foothill and Premier to work in Ocean Mist's fields, it is contrary to the Act and the Board's established precedent to place the burden on the region to prove that those workers are not employees of Ocean Mist under the Act.

While withholding the evidence to substantiate its claim, Ocean Mist simultaneously uses the absence of the evidence it withheld as a reason to endlessly delay the effectuation of the Board's remedy and deny agricultural workers their rights under the ALRA. Ocean Mist's obligation to make its employees available for the notice reading remedy has been upheld by an appellate court, is not in dispute, and is years overdue.

As discussed above, under Labor Code 1140.4, subdivision (c), the workers supplied to Ocean Mist by Foothill and Premier are treated as employees of Ocean Mist

unless Ocean Mist demonstrates that those entities operate as custom harvesters, which Ocean Mist repeatedly failed and refused to do, leaving the issue foreclosed.

The National Labor Relations Board (NLRB) imposes various forms of evidentiary sanctions, including adverse inference sanctions, against parties that do not comply with administrative subpoenas. (See, e.g., *International Union, United Auto., etc. v. NLRB* (D.C. Cir. 1972) 459 F.2d 1329, 1336-1339; *NLRB v. C.H. Sprague & Son Co.* (1st Cir. 1970) 428 F.2d 938, 942; *NLRB v. American Art Industries, Inc.* (5th Cir. 1969) 415 F.2d 1223, 1229; *The Smithfield Packing Co., Inc.* (2004) 344 NLRB 1, 8; *McAllister Towing & Transportation Co., Inc.* (2004) 341 NLRB 394, 396; *Bannon Mills, Inc.* (1964) 146 NLRB 611, 613, fn. 4, 633-634.)

In *Michael Cetta, Inc. dba Sparks Restaurant*, the Administrative Law Judge (ALJ) explained “the adverse inference rule consists of the principle that ‘when a party has relevant evidence within his control which he fails to produce, that failure gives rise to an inference that the evidence is unfavorable to him.’” (*Michael Cetta, Inc. dba Sparks Restaurant* (2018) 366 NLRB No. 97, p. 10, citing *United Auto v. NLRB, supra*, 459 F.2d 1329, 1335-1336, (describing the adverse inference rule as “more a product of common sense than of the common law”)

An adverse inference may also be drawn based upon a party’s failure to introduce into evidence documents containing information directly bearing on a material issue. (*Michael Cetta, Inc., supra*, 366 NLRB No. 97, p. 10, citing *Metro-West Ambulance Service, Inc.*, 360 NLRB No. 124 at p. 2-3. Moreover, where a subpoena applicable to the particular witness or documentary evidence in question has been served, the rationale for drawing an adverse inference is strengthened. (*Michael Cetta, Inc., supra*, 366 NLRB No. 97 p. 11 citing *United Auto v. NLRB, supra*, 459 F.2d 1329, 1338

(“the willingness of a party to defy a subpoena in order to suppress the evidence strengthens the force of the preexisting inference”).)

As indicated below, Ocean Mist’s ongoing failure to produce the payroll records Foothill and Premier are contractually required to provide, and which the Court has ordered be produced, gives rise to the inference that the evidence in these records does not support Ocean Mist’s argument that these entities fall within the narrow custom harvester exception. The Board therefore concludes these entities are farm labor contractors.

ORDER

Consistent with the discussion above, the Board concludes that Ocean Mist failed to substantiate its claim that workers supplied by Foothill and Premier, who are assigned to work on Ocean Mist’s crops are not Ocean Mist’s employees and not entitled to be included in the notice reading remedy. Furthermore, Ocean Mist’s extraordinary intransigence, coupled with its years’ long pattern of evasion appropriately gives rise to the inference that Foothill and Premier are farm labor contractors, not custom harvesters. Therefore, the workers supplied to Ocean Mist through these two entities are deemed agricultural employees of Ocean Mist under Section 1140.4, subdivision (c) of the ALRA, and shall be subject to the notice reading remedy ordered by the Board in *Ocean Mist* (2020) 46 ALRB No. 5.

DATED: March 18 2026

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Victoria Hassid, Chair

Isadore Hall, III, Member

Barry D. Broad, Member

Ralph Lightstone, Member