

# **Agricultural Labor Relations Board**

## **Report to the Legislature**



### **Fiscal Year 2011-2012**

**and**

### **Fiscal Year 2012-2013**

#### **Members of the Board**

**William B. Gould IV, Chairman<sup>1</sup>**  
**Genevieve A. Shiroma<sup>2</sup>**  
**Cathryn Rivera-Hernandez<sup>3</sup>**  
**Carole Migden<sup>4</sup>**  
**Bert Mason<sup>5</sup>**

**J. Antonio Barbosa, Executive Secretary**

**Michael Lee, General Counsel<sup>6</sup>**  
**Sylvia Torres-Guillén, General Counsel<sup>7</sup>**

**Date Submitted: April 22, 2014**

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<sup>1</sup> Appointed and designated Chairman March 18, 2014

<sup>2</sup> Reappointed February 22, 2011; designated Chair July 22, 2011-March 18, 2014

<sup>3</sup> Reappointed January 17, 2014

<sup>4</sup> Separated January 1, 2012

<sup>5</sup> Appointed January 10, 2012, retired December 30, 2013

<sup>6</sup> Term expired August 4, 2011

<sup>7</sup> Appointed General Counsel August 23, 2011

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## **Introduction**

This report is being submitted pursuant to the Agricultural Labor Relations Act (ALRA or Act), Labor Code section 1143, for fiscal years 2011-2012 and 2012-2013. Section 1143 of the Act requires:

*The board shall, at the close of each fiscal year, make a report in writing to the Legislature and to the Governor stating in detail the cases it has heard, the decisions it has rendered, the names, salaries and duties of all employees and officers in the employ or under the supervision of the board, and an account of all moneys it has disbursed.*

Modeled on the National Labor Relations Act, the ALRA created the Agricultural Labor Relations Board (ALRB) with two principal functions: 1) the conduct of secret ballot elections to determine whether employees wish to be represented by a labor organization; and 2) the prevention of practices that the ALRA regards as impediments to the exercise of employee free choice. To effectuate these functions, the ALRA created two components: The Board itself and a General Counsel. The Board is responsible for conducting and certifying the results of elections and deciding unfair labor practice cases brought before it by the General Counsel, who has final authority on behalf of the Board to investigate and prosecute such cases. The General Counsel exercises general supervision over the officers and employees in the regional offices.

On September 10, 2011, the Governor appointed Sylvia Torres-Guillén as General Counsel to a term ending August 16, 2016. On January 10, 2012, the Governor appointed Dr. Herbert “Bert” Mason to the Board to a term ending January 1, 2015.<sup>8</sup> On January 17, 2013, the Governor reappointed Cathryn Rivera-Hernandez to the Board to a term ending January 1, 2018. Each was separately confirmed by the Senate of California. Most recently, the Governor appointed William B. Gould IV, former Chairman of the National Labor Relations Board, on March 18, 2014, to serve as the Chairman the ALRB.

Fiscal years 2011-2012 and 2012-2013 brought significant legislative, budget and staffing changes for the ALRB. Governor Edmund Brown, Jr. signed Senate Bill 126 (Steinberg 2011), effective January 1, 2012, one of the most significant amendments to the Act since its passage. The result has provided increased authority to the Board to certify elections when there has been employer misconduct such that a “free and fair” election cannot be held, greater ease in seeking preliminary injunctions, and shortened deadlines for resolving election disputes. The Board adopted regulations to implement the new law. These regulations were approved by the Office of the Administrative Law on May 2, 2012. The Governor also directed that increased resources be provided the ALRB in both the 2011-2012 and 2012-2013 fiscal years for additional staff to

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<sup>8</sup> Board Member Mason retired on December 30, 2013.

investigate and litigate unfair labor practices (ULP's), conduct educational outreach, and provide administrative support.

The overall workload of the Board and General Counsel has dramatically increased. The Board and the General Counsel remain focused on increasing efficiencies in the processing of ULP charges by moving cases and complaints through the investigative, adjudicative, and appellate processes as quickly as possible. Of note, the General Counsel used the SB 126 injunctive relief law successfully to put workers back to work who were allegedly fired because of their protected activities. The General Counsel's work also resulted in significant settlements, thus avoiding protracted litigation and delayed remedies for workers while ensuring accountability and respect for the law.

The additional resources approved to increase education and outreach efforts will aid in informing the difficult to reach farm worker population of their rights under the Agricultural Labor Relations Act. It is a challenge to develop a clear and effective message that explains the ALRB's various functions and the remedies available to over 800,000 farm workers and 20,000 employers in the State of California. Over 90 percent of farm workers are foreign born and most do not speak or read English. There also has been an influx of indigenous peoples who speak numerous non-Spanish languages that often have no written language. This development, along with historical reductions in staff, makes outreach to the vast numbers of agricultural workers and employers dispersed throughout the state extremely difficult.

The ALRB sub-regional Oxnard office was reopened in April 2012 in Ventura County. Oxnard is in a vital agricultural area of the state where annually its peak harvest time sees the presence of 25,000 farmworkers. The Oxnard office was originally a regional office from 1980-1983 and briefly reopened in 2001. It was closed in 2002 due to budget cuts.

The Board continues to focus its efforts on the efficient conduct of elections and the timely resolution of disputes. The Board rules on a variety of cases that touch on almost all aspects of the Act, including those involving makewhole, mandatory mediation and conciliation, unit clarification and employee status. The Board has continued to see a dramatic increase in the number of administrative orders and decisions issued, and in the variety of legal issues raised before the Board. In particular, there has been a sharp increase in decisions and orders issued in Mandatory Mediation and Conciliation (MMC) matters. Despite these increases, the Board has reduced the time it takes to issue its decisions.

In the coming year, the Board and the General Counsel will work together to identify additional efficiencies and resource needs to carry out mission-critical duties. The names, salaries and duties of ALRB personnel are provided under separate cover and can be obtained through a written request to the Executive Secretary.

**Election Activity Fiscal Year 2011-2012**

During fiscal year 2011-2012, labor organizations filed twenty-four (24) notices of intent to take access (NA) and twelve (12) notices of intent to organize (NO). During fiscal year 2011-2012, labor organizations or farmworkers filed two (2) election petitions, including representation (RC) and decertification (RD) petitions.

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
07/26/11	NA	UFW	Bronco Berry Farms
09/26/11	NA	Teamster Local 890	Eckhart Seed Company
10/27/11	NA	UFW	San Joaquin Tomato Growers, Inc.
03/06/12	NA	UFW	VBZ
03/06/12	NA	UFW	Castle Rock Vineyards
03/06/12	NA	UFW	Delano Farms
03/07/12	NA	UFW	Lucich Farms
03/07/12	NA	UFW	Sunview Vineyards
03/07/12	NA	UFW	Fourstar Fruit
03/07/12	NA	UFW	Dulcich Farms
03/09/12	NA	UFW	Premiere Raspberry dba Dutra Farms
03/10/12	NA	UFW	Montalvo Farms, LLC
03/12/12	NA	Teamsters Local 890	Four Seasons Produce Packing, Inc.
03/21/12	NA	UFW	Catalinos Berry Farms, LLC
03/26/12	NA	UFW	Nakamura Sales Corporation aka J. Nakamura Berry Farms
04/03/12	NA	UFW	D.W. Berry Farms, LLC
04/09/12	NA	UFW	Rio Mesa Farms, LLC

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
04/10/12	NA	UFW	Saticoy Berry Farms
04/12/12	NA	UFW	Santa Rosa Berry Farms, LLC
04/15/12	NA	UFW	Premiere Raspberry LLC aka Dutra Farms
05/23/12	NA	UFW	Nakamura Sales Corporation
06/12/12	NA	UFW	T.T. Miyasaka, Inc.
06/18/12	NA	UFW	George Amaral Ranches, Inc.
06/22/12	NA	UFW	Sweethood Farm, Inc. dba "Red Rooster"
09/26/11	NO	Teamsters Local 890	Eckhart Seed Company
03/13/12	NO	UFW	Montalvo Farms, LLC
03/21/12	NO	UFW	Catalinos Berry Farms, LLC
03/27/12	NO	UFW	Nakamura Sales Corporation aka J. Nakamura Berry Farms
04/03/12	NO	UFW	D.W. Berry Farms, LLC
04/04/12	NO	UFW	Premiere Raspberry dba Dutra Farms
04/10/12	NO	UFW	Rio Mesa Farms, LLC
04/12/12	NO	UFW	Santa Rosa Berry Farms, LLC
05/23/12	NO	UFW	Nakamura Sales Corporation
06/13/12	NO	UFW	T.T. Miyasaka, Inc.
06/18/12	NO	UFW	George Amaral Ranches, Inc.
06/25/12	NO	UFW	Sweethood Farm, Inc. dba "Red Rooster"
09/26/11	RC	Teamster Local 890	Eckhart Seed Company
06/18/12	RC	UFW	George Amaral Ranches, Inc.



During fiscal year 2011-2012, the ALRB conducted three (3) elections and issued three (3) certifications.

<b>Election Date</b>	<b>Employer</b>	<b>Labor Organization</b>
07/11/12	Gargiulo, Inc.	UFW
10/03/12	Eckhart Seed Company	Teamsters Local 890
06/19/12 06/20/12	George Amaral Ranches, Inc.	UFW

<b>Certification Date</b>	<b>Type of Certification</b>	<b>Employer</b>	<b>Labor Organization</b>
02/03/12	Results of Election	Kawahara Nurseries, Inc.	UFW
03/21/12	Results of Election	California Florida Plant Company	UFW
10/12/11	Certification	Eckhart Seed Company	Teamsters Local 890

During fiscal year 2011-2012, the ALRB held three (3) hearings in the following election cases and one (1) in a unit clarification case:

<b>#</b>	<b>Case No.</b>	<b>Employer's Name</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>
1.	2010-RD-004-SAL	D'Arrigo Bros. of California	06/13/11	09/07/11
2.	2010-RC-003-SAL	Nurserymen's Exchange, Inc.	09/21/11	09/23/11
3.	2011-RC-001-SAL	California Florida Plant Co.	09/28/11	11/02/11
4.	2010-UC-1-VI	Sun World International	10/26/11	10/26/11

**Election Activity Fiscal Year 2012-2013**

During fiscal year 2012-2013, labor organizations filed eight (8) notices of intent to take access (NA) and seven (7) notices of intent to organize (NO). During fiscal year 2012-2013, labor organizations or farmworkers filed six (6) election petitions, including representation (RC) and decertification (RD) petitions.

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
07/09/12	NA	UFW	Gargiulo Inc.
02/05/13	NA	UFW	Gila Farm Land LLC
02/06/13	NA	UFW	RBI Packing LLC & Gila Farm Land LLC
08/04/12	NA	UFW	Corralitos Farms, LLC
09/04/12	NA	UFW	Corralitos Farms, LLC
09/10/12	NA	UFW	Premiere Raspberries, LLC dba Dutra Farms
09/10/12	NA	UFW	T.T. Miyasaka, Inc.
09/20/12	NA	Teamsters Local 890	Foothill Packing, Inc.
07/09/12	NO	UFW	Gargiulo Inc.
02/05/13	NO	UFW	Gila Farm Land LLC
02/06/13	NO	UFW	RBI Packing LLC & Gila Farm Land LLC
08/04/12	NO	UFW	Corralitos Farms, LLC
09/04/12	NO	UFW	Corralitos Farms, LLC
09/10/12	NO	UFW	Premiere Raspberries, LLC dba Dutra Farms
09/10/12	NO	UFW	T.T. Miyasaka, Inc.
07/09/12	RC	UFW	Gargiulo, Inc.

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
02/06/13	RC	UFW	RBI Packing LLC & Gila Farm Land LLC
08/04/12	RC	UFW	Corralitos Farms, LLC
08/04/12	RC	UFW	Corralitos Farms, LLC
09/14/12	RC	UFW	Corralitos Farms, LLC

During fiscal year 2012-2013, the ALRB conducted two (2) elections and issued two (2) certifications.

<b>Election Date</b>	<b>Employer</b>	<b>Labor Organization</b>
07/11/12	Gargiulo, Inc.	UFW
09/19/12	Corralitos Farms, LLC	UFW

<b>Certification Date</b>	<b>Type of Certification</b>	<b>Employer</b>	<b>Labor Organization</b>
07/19/12	RC	Gargiulo, Inc.	UFW
07/24/12	RC	George Amaral Ranches, Inc.	UFW

During the fiscal year 2012-2013, the ALRB did not conduct any hearings in election cases.

## **Decisions Issued By the Board in Fiscal Year 2011-2012**

The Board issued eight (8) decisions in fiscal year 2011-2012. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website ([www.alrb.ca.gov](http://www.alrb.ca.gov))).

### ***CALIFORNIA FLORIDA PLANT CO., L.P. (2011) 37 ALRB No. 2***

#### **Background**

On February 4, 2011, the United Farm Workers of America (UFW) filed a Petition for Certification to represent the agricultural employees of California Florida Plant Co., L.P. (Employer). On February 11, 2011, a representation election was held with the following results: “union,” 12; “no union,” 7; and 5 unresolved challenged ballots. As the unresolved challenged ballots were sufficient in number to determine the outcome, the Regional Director conducted an investigation of the eligibility of the challenged voters/employees. One individual’s eligibility was challenged by the Regional Director because he was a student. The Regional Director upheld the challenge to him based on his student status. This worker received a scholarship from Employer that paid for tuition, books, food, and gas, and he also received housing. The amount of his scholarship did not vary with the amount of hours he worked. The Regional Director relied entirely on National Labor Relations Board (NLRB) precedent in concluding that the worker was primarily a student, was not a statutory employee, and was therefore not eligible to vote. Employer timely filed an exception to the Regional Director’s report with the Board.

#### **Board Decision**

The Board overturned the Regional Director. The Board held that the NLRB decisions cited by the Regional Director were applicable precedent with respect to the policy of excluding student-workers who are primarily students from the category of statutory employee but were inapposite on their facts, as they involved situations where student-workers were employees of the same academic institutions in which they were enrolled. The application of the “primarily a student” test presumed the existence of an academic relationship and an employment relationship between the student-workers and their employers. In this case, the record did not reflect that, unlike the academic institutions in the NLRB cases, the employment relationship between Employer and the worker was contingent upon an ongoing teaching relationship between Employer and the worker. The Board found the Employer was a benefactor, not an educator or an academic institution. The Board therefore found the worker was eligible to vote in the election and his ballot was counted.

***UNITED FARM WORKERS OF AMERICA (Jose Ocegueda, et al., Charging Parties) (2011) 37 ALRB No. 3***

**Background**

The United Farm Workers of America (UFW) and Employer San Martin Mushrooms, Inc. (Employer) entered into a collective bargaining agreement (CBA) that provided that if the Employer needed to assign a worker to perform work in another classification with a lower rate of pay, he/she would be paid his/her regular salary, but if the rate of pay was higher, then the worker would be paid the higher rate. Charging Parties believed they would receive their average piece rate wages for performing general labor under the contract term, as their average piece rate wages were higher than minimum wage. Their first paychecks after the CBA became effective showed they were still being paid minimum wage for their general labor duties, so they complained to the UFW.

The UFW met with Employer about Charging Parties' grievance. Employer understood the contractual provision to provide that only when a worker performed duties in a higher-paid classification, he or she would be paid the higher rate. They stated they could not afford to pay the differences in harvester wages and general labor wages for the general labor work performed and would hire workers to do the general labor work at the lower rate rather than use the harvesters and pay them a higher wage. UFW and Employer executed a contract modification that excluded the higher pay provision and made the general labor work voluntary for the harvesters.

Charging Parties filed their charges against the UFW on October 5, 2007. The ALRB's General Counsel maintained that the UFW violated its duty of fair representation by failing to pursue the grievance and bargaining away vested wage rights when it negotiated the contract modification, and that the UFW was liable for backpay to Charging Parties. The Administrative Law Judge (ALJ) dismissed the complaint in its entirety, concluding that the UFW did not violate its duty of fair representation and no backpay was appropriate. The General Counsel filed exceptions to the ALJ's decision.

**Board Decision**

The Board affirmed the decision of the ALJ. The Board held that a breach of the duty of fair representation is shown when a union ignores a grievance or acts in a manner that is arbitrary, invidious, in bad faith, or so outside the wide range of reasonableness as to be wholly irrational. The Board found that it was not unreasonable for the UFW to fail to pursue the grievance as a means of preserving the general labor work for existing employees. The Board further held that the contract language at issue was ambiguous such that there were no vested wage rights at issue and the contract modification did not compromise employees' claims under the prior wage term of the CBA.

## ***KAWAHARA NURSERIES, INC. (2011) 37 ALRB No 4***

### **Background**

On January 12, 2010, a petition for certification was filed by the United Farm Workers of America (Union or UFW) to represent the agricultural employees of *Kawahara Nurseries, Inc.* (Employer). After the January 19, 2010 election, the initial tally of ballots was as follows: "union," 70; "no union," 68; and 28 unresolved challenged ballots. In *Kawahara Nurseries, Inc. (2010) 36 ALRB No. 3*, the Board set for hearing the challenges to three workers alleged to be supervisors. The Board also set for hearing the question of whether any of 23 "merchandisers" regularly handled non-Kawahara plants, thereby taking them out of the ALRB's jurisdiction. If they handled only Kawahara plants, the "merchandisers" were engaged in secondary agriculture, as their work otherwise was in connection with an incident to Employer's nursery operations.

### **IHE's Decision**

The Investigative Hearing Examiner (IHE) found that six of the twenty-three merchandisers handled only Kawahara plants and overruled the challenges to these workers. He concluded the remaining 17 merchandisers regularly handled non-Kawahara plants and sustained their challenges. The IHE found that the three alleged supervisors made job assignments and responsibly directed work and were therefore supervisors under section 1140(j) of the Agricultural Labor Relations Act (ALRA). He sustained the challenges to these individuals.

### **Board Decision**

The Board upheld the IHE in overruling the challenges to the three merchandisers who testified at the hearing. The Board found that the IHE improperly relied on uncorroborated hearsay evidence in ruling on the status of the 20 merchandisers who did not testify. As the record contained no other evidence to support these challenges, the Board found that the UFW failed to meet its burden of producing evidence in support these challenges, thus requiring that the challenges to all 20 merchandisers be overruled. The Board overturned the IHE's recommendation to sustain the challenges to the three alleged supervisors, finding that the record evidence failed to show that the exercise of any purported supervisory authority required the use of independent judgment as required by the statutory definition of "supervisor."

## ***SAN JOAQUIN TOMATO GROWERS, INC. (2011) 37 ALRB No. 5***

### **Background**

On November 17, 2011, the United Farm Workers of America (UFW) filed a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to Labor Code section 1164 and Title 8, California Code of Regulations section 20400. The employer, San Joaquin Tomato Growers, Inc. (SJTG), timely filed an answer to the declaration. On December 2, 2011, the Agricultural Labor Relations Board (ALRB or Board) issued an Order to Show Cause why the UFW's request to invoke the MMC process should not be dismissed for failure to meet the statutory prerequisite that "the parties have not

previously had a binding contract between them." (Lab. Code section 1164.11.) The UFW filed its response to the Order to Show Cause on December 14, 2001, and on December 21, 2011 SJTG filed its response to the UFW's submission.

### **Board Decision**

Finding that there were material facts in dispute that must be resolved in order to determine if the parties previously had a binding contract between them that precluded referral to MMC, the Board set the matter for hearing to resolve the disputed facts. The Board also found that none of SJTG's other claims of failure to meet the statutory requirements for referral to MMC had merit. The Board rejected SJTG's assertion that a 1994 refusal to bargain violation was too remote in time from the request for MMC, as the MMC provisions require only that the employer have "committed an unfair labor practice." The Board also rejected SJTG's claim that the UFW abandoned the bargaining unit and that a period of dormancy in bargaining, even a prolonged period, did not establish union "abandonment" of a certification, particularly where, as here, bargaining has resumed after a period of dormancy. Lastly, the Board rejected SJTG's claim that the MMC provisions are invalid because they are inconsistent with a pre-existing provision of the ALRA, section 1155.2, subdivision (a) that states in pertinent part that the bargaining obligation "does not compel either party to agree to a proposal or require the making of a concession." An identical argument was made and rejected in *Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3, at p. 12.

### ***NURSERYMEN'S EXCHANGE, INC. (2012) 38 ALRB No. 1***

#### **Background**

On July 26, 2010, the United Farm Workers of America (UFW) filed a Petition for Certification to represent the agricultural employees of Nurserymen's Exchange, Inc. (NEI or Employer). On August 2, 2010, a representation election was held. On August 9, 2010, Employer filed nine election objections, the resolution of which was held in abeyance while ballot challenges were resolved. Following a resolution of the ballot challenges, the Regional Director issued a final tally of ballots on January 12, 2011, with the following results: "UFW," 90; "No Union," 64; "Unresolved Challenged Ballots," 13. The Executive Secretary issued an order on February 17, 2011 addressing Employer's August 9, 2010 election objections, and after requests for review of the Executive Secretary's order were denied on March 10, 2011 (Nurserymen's Exchange, Inc., Administrative Order No. 2011-02), the Executive Secretary issued an order on April 5, 2011 calling for an investigative hearing on the issue whether the timeliness requirement for peak agricultural employment in Labor Code sections 1156.3(a)(1) and 1156.4 had been met.

In his decision issued December 19, 2011, the Investigative Hearing Examiner (IHE) recommended that the election be overturned because the 50 percent of peak employment requirement set forth in Labor Code sections 1156.3(a)(1) and 1156.4 had not been met in this past peak case, i.e., a case in which peak employment for the calendar year occurred

prior to the election. The IHE held that the Regional Director's peak determination was not reasonable in light of the information available at the time of the election. The Regional Director's use of multi-year averaging of peak in a past peak case, absent any special circumstance or factor, was not appropriate. Finding no special circumstance or factor, the IHE recommended that the election be overturned. Petitioner filed exceptions on January 31, 2012.

### **Board Decision**

The Board considered the record and the recommended decision of the IHE in light of the Petitioner's exceptions and briefs and decided to affirm the IHE's conclusion that the election be set aside. The Board wrote separately to clarify that the appropriate standard of review to be applied to past peak cases is as the IHE reasoned: The Board reviews a Regional Director's 50 percent of peak employment determination for reasonableness in light of the information available at the time of the election.

### ***SAN JOAQUIN TOMATO GROWERS, INC. (2012) 38 ALRB No. 2***

#### **Background**

On November 17, 2011, the United Farm Workers of America (UFW) filed a declaration requesting mandatory mediation and conciliation pursuant to Labor Code section 1164. The employer, San Joaquin Tomato Growers, Inc. (SJTG), timely filed an answer to the declaration. In addition to asserting several other bases why the request should be dismissed, SJTG submitted documents that appeared to indicate that the parties had reached an agreement in 1998, but had not formalized or signed the agreement. Recognizing that as a general rule agreements need not be signed in order to be binding, but in order to provide the UFW with the opportunity to show whether there were intervening events or other factors demonstrating that no binding agreement in fact existed, the Agricultural Labor Relations Board (Board) issued an Order to Show Cause why the UFW's request should not be dismissed for failure to meet the statutory prerequisite that "the parties have not previously had a binding contract between them." (Lab. Code section 1164.11.) After receiving the UFW's response and SJTG's reply thereto, the Board issued *San Joaquin Tomato Growers, Inc. (2011) 37 ALRB No. 5*, in which it found that the request for mandatory mediation and conciliation met all other statutory prerequisites but that a hearing was necessary to resolve disputed material facts regarding whether the parties previously had a binding contract between them. A hearing was held and on March 6, 2012, the Administrative Law Judge (ALJ) issued his decision. The ALJ concluded that there was no binding agreement because the intent and belief of both parties was that formalization and execution of the agreement were required to finalize the agreement. SJTG timely filed exceptions to the ALJ's decision.

#### **Board Decision**

The Board adopted the ALJ's decision, agreeing that on the particular facts of this case there was no binding agreement because the evidence showed that the parties mutually intended that the agreement was not to be binding until it was formalized and executed.



The Board acknowledged that a binding collective bargaining agreement may be formed by a variety of manifestations of acceptance of an outstanding offer, whether or not the agreement is reduced to writing or signed. However, the Board cited the overriding principle that the parties' intent is what controls and, as here, that parties are free to make formalization and execution a condition precedent to enforceability. Having thus found that all statutory prerequisites had been met, the Board directed the parties to mandatory mediation and conciliation.

### ***SUN WORLD INTERNATIONAL, LLC, (2012) 38 ALRB No. 3***

#### **Background**

On September 13, 2010, the United Farm Workers of America (UFW) filed a Petition for Unit Clarification (UC Petition) under six certifications issued in the 1970's. Four of the certifications covered operations that had become inactive. The UFW requested that the geographic scope and name of employer be clarified as: "all agricultural employees of Sun World International, LLC (Employer) in the State of California." The UFW sought to combine operations existing at the time the old certifications were issued with all operations subsequently acquired by Employer into one statewide unit.

#### **IHE Decision**

The Investigative Hearing Examiner (IHE) recommended that the UC Petition be dismissed in its entirety. The IHE's decision explored two primary issues: 1) The status that should be given to certifications covering farming operations that have become inactive; and 2) the extent to which a UC Petition can be used to expand the reach of a certification to include operations that did not exist when the union was originally certified. With respect to the first issue, the IHE recommended that where the existing certifications have long been inactive, the Board use its discretion by refusing to extend those certifications to noncontiguous operations. With respect to the second issue, the IHE concluded that the propriety of accreting new operations must be analyzed in the same manner as initial unit determinations regardless of whether the original unit was designated as "statewide."

#### **Board Decision**

The Board adopted the IHE's decision with several clarifications. First, while the Board agreed that it would not be proper to accrete any of Employer's present operations to the inactive certifications in the instant case, the Board found the IHE's recommended holding was overbroad and that in limited circumstances it may be appropriate to accrete noncontiguous operations. Second, the Board clarified that the designation of a "statewide" bargaining unit merely reflects that at the time of certification the unit included all of an employer's operations in California, and that it has no independent legal significance regarding the inclusion of after-acquired operations. Finally, while the Board found it was not necessary to determine whether NLRB precedent on accretion of operations where the number of employees is larger than in the original bargaining unit

was applicable in this case, the Board noted that accretions with similar proportions to that being sought by the UFW have been found to be inappropriate by the NLRB.

***SAN JOAQUIN TOMATO GROWERS, INC. (2012) 38 ALRB No. 4: (20 ALRB No. 13)***

**Background**

This case arose out of a technical refusal to bargain engaged in by San Joaquin Tomato Growers, Inc. (Respondent) to test the certification of the United Farm Workers of America (UFW) as the collective bargaining representative of Respondent's agricultural employees. In 1994, the Agricultural Labor Relations Board (ALRB or Board) found Respondent's refusal to bargain violated the Agricultural Labor Relations Act (ALRA), and the Board ordered that bargaining makewhole be paid to the employees for the period July 12, 1993, through September 8, 1994 (the period during which the Respondent refused to bargain). (*San Joaquin Tomato Growers, Inc.* (1994) 20 ALRB No. 13.) The Respondent maintained that no makewhole was owed because it claimed to have paid its workers the highest piece rate for harvest of tomatoes during the makewhole period. For numerous reasons, many years passed before the General Counsel (GC) issued a makewhole specification in this matter on April 5, 2011. The methodology used to calculate the specification was based on a contract averaging approach developed by Dr. Philip Martin, a professor of agricultural economics at U.C. Davis. ALRB Regional Staff applied Dr. Martin's methodology to payroll records for workers employed during the makewhole period. The calculation gave rise to a makewhole principle amount of \$375,407.00, plus \$443,697.00 in interest for a total of \$819,104.00.

**Administrative Law Judge Decision**

The Administrative Law Judge (ALJ) conducted a compliance hearing in this matter on July 19 and 20 and August 15, 16, and 19, 2011. On January 10, 2012, the ALJ issued his recommended decision. The ALJ found the GC's contract averaging methodology as expressed in the makewhole specification to be unreasonable for a number of reasons, and chose to use a comparable contracts approach to determine the makewhole remedy. The ALJ rejected the Respondent's preferred comparable "contract," a 1998 agreement between Respondent and the UFW, because it was preceded by Respondent's unlawful refusal to bargain, was reached too far outside the makewhole period, and was unexecuted. The ALJ went on to find that a 1995 contract between the UFW and Meyer Tomato in the Visalia area was an appropriate measure of makewhole. The ALJ recommended that the workers receive an increase of 2.5 percent of their gross wages for the period July 12, 1993 to July 11, 1994, and an increase of 5.4 percent for the remainder of the makewhole period. The ALJ included no award for fringe benefits. The ALJ recommended calculating interest "as usual;" however, he also stated that if the principal to be paid was close to the amount in the GC's makewhole specification, interest should be cut off in 1997 based on the agency's mixed signals as to how it was going to proceed with the case.

### **Board Decision and Order**

The Board upheld the ALJ's rejection of the 1998 agreement between the parties as an appropriate comparable contract for the purpose of calculating makewhole; however, the Board rejected the ALJ's use of the 1995 Meyer/Visalia contract as a comparable contract. The Board reversed the ALJ's conclusion that the GC's contract averaging methodology was unreasonable on its face. Finding that Board precedent clearly permitted the Board to use alternate formulas for computing makewhole when there are no comparable contracts available (*Hess Collection Winery* (2005) 31 ALRB No. 3; *Adam Dairy* (1978) 4 ALRB No. 24; *Abatti Farms, Inc.* (1990) 16 ALRB No. 17), the Board found the GC's contract averaging approach to be reasonable under the circumstances of this case. The Board made modifications to the methodology, namely by eliminating a 5 percent increase for miscellaneous fringe benefits (holiday vacation, etc.), and by adding five additional contracts to the list of those to be averaged. In addition, the Board found that the GC made errors in the application of the methodology to the payroll records, and made appropriate adjustments. Modified figures to be applied to the payroll records are as follows: a 2.52 percent increase for 1993 and a compounded 2.25 percent increase for 1994. Adjusted medical and pension benefits as dollar per hour worked are: Medical \$0.86; Pension \$0.09. With respect to paid holidays, the Board directed that where it can be verified that a worker worked 5 days in the 2 weeks preceding either the July 4 or Labor Day holiday, that worker shall be given the equivalent of 8 hours pay. With respect to interest, the Board found in light of the unique circumstances presented by the extraordinary delay in enforcement, the award of interest would be contingent on the employees being located.

### **Decisions Issued By the Board in Fiscal Year 2012-2013**

The Board issued seventeen (17) decisions in fiscal year 2012-13. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website ([www.alrb.ca.gov](http://www.alrb.ca.gov))).

#### ***GEORGE AMARAL RANCHES, INC. (2012) 38 ALRB No. 5***

On June 27, 2012, the United Farm Workers of America (UFW) filed a Petition for Certification to represent the agricultural employees of George Amaral Ranches, Inc. (Employer). The Petition for Certification stated that Employer had approximately 300 employees, of whom approximately 200 were on strike when the petition was filed. A strike election was held on June 19 and June 20, 2012, and the Tally of Ballots showed the following result: "UFW," 265; "no union," 65; "unresolved challenged ballots," 14. The tally listed a total of 422 names on the eligibility list.

Employer timely filed six election objections: 1) The petition failed to satisfy the statutory requirements of a strike majority; 2) The Board failed to properly investigate the election petition's allegation of a strike majority; 3) The Board abused its discretion by allowing a 48-hour election to take place when fewer than a majority of Employer's

workers were on strike when the election petition was filed; 4) The Board improperly allowed separate voting processes for employees engaged in the strike; 5) The Board engaged in misconduct affecting the outcome of the election by allowing a union-supportive mob to, among other things, threaten company observers; and 6) The Board did not provide proper notice to non-striking employees. The UFW filed a Motion to Dismiss Employer's Election Objections on the grounds that it received a faxed copy of the objections at approximately 7:58 pm on June 27, 2012, the day the election objections were required to be filed with the Executive Secretary.

The Board found Objections 1, 2 and 3 and the supporting declarations to be sufficient to warrant a hearing on the question whether the number of employees on strike at the time the election petition was filed was less than a majority of total eligible voters and whether the Regional Director's conclusion that a majority were on strike was reasonable based on the information available to him at the time of the election. (*T. Ito and Sons Farms* (1983) 9 ALRB No. 56, IHED at pp. 74-75; *Muranaka Farms* (1983) 9 ALRB No. 20 at pp. 4-6). The Board dismissed Objections 4, 5 and 6 on the grounds that the supporting declarations were insufficient on their face. The supporting declarations for Objections 4 and 5 failed to state with particularity as required by Section 20365 (c) (2) (B) of the Board's regulations who caused Employer's observers to feel threatened and intimidated or how. The supporting declarations for Objection 6 failed to state that the employees who were alleged to have not received sufficient notice of the election did not vote or failed to vote. An objection based on inadequate notice will generally be dismissed unless the objecting party can show that an outcome determinative number of voters will be disenfranchised. (*Gilroy Foods, Inc.* (1997) 23 ALRB No. 10 at 9, citing *R.T. Englund Company* (1976) 2 ALRB No. 23). The UFW's Motion to Dismiss was denied because timely service of election objections on parties is not jurisdictional, the UFW alleged no prejudice, and Section 20365 of the Board's regulations does not require responsive pleadings in response to election objections.

## ***ACE TOMATO COMPANY, INC. (2012) 38 ALRB No. 6***

### **Background**

On March 14, 2012, the United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (Board) a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to section 1164, subdivision (a), paragraph (1) of the Agricultural Labor Relations Act (ALRA). Finding that the statutory prerequisites had been met, on March 29, 2012 the Board issued an Administrative Order 2012-5 directing the parties to MMC. While the parties were able to agree upon the vast majority of the terms of a collective bargaining agreement, they could not agree on wages and benefits and three non-economic provisions, necessitating that those terms be determined by the mediator. On June 28, 2012, Mediator Matthew Goldberg filed with the Board the attached report fixing the terms upon which the parties had not agreed. Ace Tomato Company, Inc. (Ace) timely filed a petition for review of the mediator's report, urging that the Board reject the wage rates set by the mediator.

### **Board Decision**

Ace contended that the mediator erred in relying on a recently negotiated contract between the UFW and Pacific Triple E Ltd., a larger tomato company, on the grounds that the contract is inadmissible hearsay and it involved dissimilar business operations. Ace argued that in lieu of using the Pacific Triple E Ltd. contract as a guide the mediator should have adopted Ace's proposal of an 8% increase in the first year with reopeners for the second and third years. Lastly, Ace argued that the mediator committed clear error by making wage rates for the transplant crews retroactive to April 1, 2012. The Board noted that the rules of evidence need not be applied in MMC proceedings and held that, in any event, the mediator properly found that the record was sufficient to indicate the trustworthiness of the contract as a business record and that Ace had not proffered any reasonable basis for doubting the authenticity of the contract. The Board rejected Ace's other contentions, finding that nothing in the record indicated that the mediator's findings were clearly erroneous, or arbitrary or capricious. The Board thus concluded that, in light of the statutory standard of review, there were no grounds to warrant granting review and affirmed the mediator's report in full.

### ***SAN JOAQUIN TOMATO GROWERS, INC. (2012) 38 ALRB No. 7***

#### **Background**

On November 17, 2011, the United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (ALRB or Board) a declaration requesting mandatory mediation and conciliation (MMC) pursuant to Labor Code section 1164. On December 23, 2011, the Board issued *San Joaquin Tomato Growers, Inc. (2011) 37 ALRB No. 5*, in which it found that the request for MMC met all other statutory prerequisites but that there were material facts in dispute regarding whether the parties previously had a binding contract between them that precluded referral to MMC. Accordingly, a hearing was held on February 8, 2012 and the Administrative Law Judge (ALJ) issued his decision on March 6, 2012. In that decision, the ALJ concluded that there was no binding agreement because the intent and belief of both parties was that execution of the agreement was required to manifest final consent to its terms. *San Joaquin Tomato Growers, Inc. (SJTG)* filed exceptions to the ALJ's decision. On March 29, 2012, the Board issued *San Joaquin Tomato Growers, Inc. (2012) 38 ALRB No. 2*, affirming the ALJ's decision and referring the parties to MMC.

The parties engaged in the MMC process but were unable to agree on all terms of a collective bargaining agreement, thereby necessitating a report be issued by the mediator fixing the disputed terms. On July 16, 2012, Mediator Matthew Goldberg issued his report. SJTG timely filed with the Board a petition for review of the report. SJTG takes issue with various findings of the mediator regarding the wage and duration provisions of the contract.

### **Board Decision**

In light of the mediator's stated intent to track wage increases in the recently negotiated Pacific Triple E contract, there appeared to be an arithmetic error based on awarding a \$0.02 increase per bucket in the second year and a \$0.01 increase in the third year when the corresponding \$0.02 and \$0.01 increases in the Pacific Triple E contract were for two buckets. The Board also found that the inclusion of tractor drivers in an incentive program, without explanation for their inclusion, appeared to be clearly erroneous. Therefore, the Board found that granting review was warranted so that the mediator could clarify his intent as to 1) the amount of the picking piece rate increases in the second and third year of the contract and 2) the inclusion of tractor drivers in a bonus (incentive) program. The Board found no basis for review regarding SJTG's other contentions.

### ***ACE TOMATO COMPANY, INC. (2012) 38 ALRB No. 8***

#### **Background**

On March 14, 2012, the United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (Board) a declaration requesting Mandatory Mediation and Conciliation (MMC) pursuant to section 1164, subdivision (a), paragraph (1) of the Agricultural Labor Relations Act (ALRA). On March 29, 2012, finding that the statutory prerequisites had been met, the Board issued an order directing the parties to MMC. On June 28, 2012, Mediator Matthew Goldberg filed with the Board a report fixing the terms upon which the parties had not agreed. Ace Tomato Company, Inc. (Ace) timely filed a petition for review of the mediator's report, urging that the Board reject the wage rates set by the mediator. On July 25, 2012, the Board issued a decision affirming the mediator's report in full. (*Ace Tomato Company, Inc. (2012) 38 ALRB No. 6.*) The deadline for Ace to seek appellate court review of the Board's decision is August 24, 2012. On August 1, 2012, the UFW filed a Request For Agency Action To Enforce Anti-stay Provision In The MMC Law, alleging that Ace had failed to implement the collective bargaining agreement as ordered in 38 ALRB No. 6 and requesting that the Board go to court to enforce its decision. The UFW asserted that payment of wages due under the agreement since its July 1, 2012 effective date could be jeopardized without immediate enforcement in light of the recent sale of the company, effective at the end of the present tomato harvest season in September.

#### **Board Decision**

The Board found no legal basis upon which to grant the UFW's request for enforcement at this time. The Board explained that enforcement of its orders is legally available only after first obtaining a court judgment, which can be obtained in only two ways, 1) by a reviewing court issuing a judgment affirming the Board's decision, or 2) where the time for court review has lapsed. Neither had occurred at the time of the UFW's request for enforcement. The Board also observed that the remedy the UFW seeks is in the nature not of enforcement, but temporary injunctive relief. While the MMC provisions of the ALRA do not provide authority for that type of action, the Board took administrative notice of a pending related unfair labor practice charge filed by the UFW that may

provide an avenue for the temporary relief, subject to the General Counsel's final authority to issue complaints and seek injunctive relief pursuant to ALRA section 1160.4.

***SAN JOAQUIN TOMATO GROWERS, INC. (2012) 38 ALRB No. 9***

**Background**

On November 17, 2011, the United Farm Workers of America (UFW) filed with the Agricultural Labor Relations Board (ALRB or Board) a declaration requesting mandatory mediation and conciliation (MMC) pursuant to Labor Code section 1164. On December 23, 2011, the Board issued *San Joaquin Tomato Growers, Inc. (2011) 37 ALRB No. 5*, in which it found that the request for MMC met all other statutory prerequisites but that there were material facts in dispute regarding whether the parties previously had a binding contract between them that precluded referral to MMC. A hearing was held on February 8, 2012 and on March 6, 2012 the Administrative Law Judge (ALJ) issued a decision in which he concluded that there was no binding agreement because the intent and belief of both parties was that execution of the agreement was required to manifest final consent to its terms. San Joaquin Tomato Growers, Inc. (SJTG) filed exceptions to the ALJ's decision. On March 29, 2012, the Board issued *San Joaquin Tomato Growers, Inc. (2012) 38 ALRB No. 2*, affirming the ALJ's decision and referring the parties to MMC.

The parties engaged in the MMC process but were unable to agree on all terms of a collective bargaining agreement, thereby necessitating a report be issued by the mediator fixing the disputed terms. On July 16, 2012, Mediator Matthew Goldberg issued his first report. SJTG timely filed with the Board a petition for review of the report, taking issue with various findings of the mediator regarding the wage and duration provisions of the contract. On August 3, 2012, the Board issued *San Joaquin Tomato Growers, Inc. (2012) 38 ALRB No. 7*. In that decision, the Board granted review so that the mediator could clarify his intent as to 1) the amount of the picking piece rate increases in the second and third year of the contract, and 2) the inclusion of the tractor drivers in an incentive bonus program. The Board rejected all of SJTG's other challenges to the findings of the mediator.

On September 26, 2012, the mediator filed a "Mediator's Clarification of the Report to the Board" (hereafter referred to as the "second report"). The mediator confirmed that his intent was to track the wage increases in the Pacific Triple E contract, which expresses the rates on a two-bucket basis, while the mediated contract in the present case expresses rates on a per bucket basis. Accordingly, the mediator clarified that his intent was to provide for a \$0.01 per bucket increase in the second year and a \$0.005 per bucket increase in the third year. Based largely on the fact the tractor drivers have not received the bonuses previously and are not assigned to a particular crew, but rather haul trailers for all the crews, the mediator concluded that the bonus would not supply an incentive to the tractor drivers. He thus found that his initial inclusion of the tractor drivers in the bonus program was erroneous.

**Board Decision**

As neither party filed a petition for review of the mediator’s second report, the Board observed that the second report by operation of law took effect as a final order of the Board. The Board incorporated by reference as a final order of the Board its interlocutory decision in San Joaquin Tomato Growers, Inc. (2012) 38 ALRB No. 7, in which the Board affirmed all aspects of the mediator’s first report, save for the two provisions addressed in the mediator’s second report.

***CORRALITOS FARMS, LLC (2012) 38 ALRB No. 10***

**Background**

On September 14, 2012, the United Farm Workers of America (UFW or petitioner) filed a petition for representation with the Agricultural Labor Relations Board (ALRB or Board) Salinas Regional Office seeking an election among the agricultural employees of Corralitos Farms, LLC (Employer) in Watsonville, California. The employees are involved in the harvesting of strawberries.

On September 19, 2012, an election was held with the tally of ballots producing the following results:

United Farm Workers	154
No Union	187
Unresolved Challenged Ballots	19
TOTAL	360

On September 26, 2012, the UFW timely filed an objection petition with the Board pursuant to Labor Code section 1156.3(e). The UFW argues that the Employer’s misconduct affected the results of the election; therefore, the UFW asks that the Board refuse to certify the results of the election. In addition, because the UFW asserts that the employer’s misconduct renders slight the chances of a new election reflecting the free and fair choice of employees, the UFW requests that the Board certify the UFW as the collective bargaining representative pursuant to section 1156.3(f).

**Board Decision**

The Board set 15 of the UFW’s 17 objections for an investigative hearing, and set two objections for hearing conditioned on the outcome of the investigation of two unfair labor practice (ULP) charges currently pending before the General Counsel. These two objections allege facts that are mirrored in two pending ULP charges (see *Mann Packing Co, Inc.* (1989) 15 ALRB No. 1). The Board also directed the Investigative Hearing Examiner to take evidence relevant to the objective effect of the alleged misconduct on employee free choice, from which it may be determined whether certification pursuant to section 1156.3(f) would be appropriate.



***PREMIERE RASPBERRIES, LLC dba DUTRA FARMS (2012) 38 ALRB No. 11***

On September 19, 2012, the General Counsel filed an interim appeal pursuant to Title 8, section 20242(b) of the Board's regulations seeking review of an interlocutory evidentiary ruling of Administrative Law Judge (ALJ) Douglas Gallop. ALJ Gallop refused to allow the General Counsel to introduce evidence regarding the alleged chilling effect of Dutra Farms' (Employer) refusal to reinstate an employee on the grounds that it was irrelevant unless the General Counsel were seeking a bargaining order. The General Counsel moved to amend its complaint to seek a bargaining order, and the motion was denied.

The General Counsel filed its interim appeal without setting forth a statement as to the necessity of interim review as required by section 20242(b) of the Board's regulations. In its appeal, the General Counsel argued, *inter alia*, that it was not required to specifically request a bargaining order in its request for relief in order to introduce evidence regarding the chilling effect of Employer's refusal to reinstate the employee. On September 27, 2012, Employer filed its statement opposing the General Counsel's appeal on the grounds that the General Counsel failed to seek permission to file it. Employer argued that a bargaining order was not appropriate in this case because, *inter alia*, no election had been held, no petition for election had been filed, Employer had no notice that a bargaining order would be sought, and the General Counsel neither alleged nor made any effort to introduce evidence of majority status. The United Farm Workers of America (UFW) filed a statement in support of the General Counsel's appeal despite the fact that section 20242(b) of the Board's regulations does not permit the filing of additional statements in support of an appeal absent a request from the Board through the Executive Secretary. No such request had been made.

The Board denied what it construed to be the General Counsel's application for special permission for interim appeal on the grounds that it not only failed to state the necessity for interim review, but also that the application failed to meet the Board's newly adopted standard, to wit: The Board will only hear interim appeals of interlocutory rulings pursuant to Regulation 20242(b) that cannot be addressed effectively through exceptions filed pursuant to Regulations 20282 or 20370(j). The Board reviewed the standards applied by the federal and California courts, the National Labor Relations Board (NLRB), and the California Public Employee Relations Board (PERB) to decide whether to hear interlocutory appeals in deciding to adopt its own standard. The Board noted that it may adopt regulations through ad hoc adjudication, *ALRB v. Superior Court* (1976) 16 Cal.3d 393, and is not required to follow NLRB procedure, *Tex-Cal Land Management, Inc. v. ALRB* (1979) 24 Cal.3d 335. The Board also struck the UFW's statement in support.

## ***SAN JOAQUIN TOMATO GROWERS, INC. (2012) 38 ALRB No. 12***

### **Background**

This case arises out of a technical refusal to bargain engaged in by San Joaquin Tomato Growers, Inc. (Respondent) to test the certification of the United Farm Workers of America (UFW) as the collective bargaining representative of Respondent's agricultural employees. In 1994, the Agricultural Labor Relations Board (ALRB or Board) found Respondent's refusal to bargain violated the Agricultural Labor Relations Act (ALRA), and the Board ordered that bargaining makewhole be paid to the employees for the period July 12, 1993, through September 8, 1994 (the period during which the Respondent refused to bargain). (*San Joaquin Tomato Growers, Inc.* (1994) 20 ALRB No. 13.) The General Counsel (GC) issued a makewhole specification in this matter on April 5, 2011. The methodology used to calculate the specification was based on a contract averaging approach developed by Dr. Philip Martin, a professor of agricultural economics at U.C. Davis. ALRB Regional Staff applied Dr. Martin's methodology to payroll records for workers employed during the makewhole period.

### **Administrative Law Judge Decision**

The Administrative Law Judge (ALJ) conducted a compliance hearing in this matter on July 19 and 20 and August 15, 16, and 19, 2011. On January 10, 2012, the ALJ issued his recommended decision. The ALJ found the GC's contract averaging methodology as expressed in the makewhole specification to be unreasonable for a number of reasons, and chose to use a comparable contracts approach to determine the makewhole remedy. The ALJ rejected the Respondent's preferred comparable "contract," a 1998 agreement between Respondent and the UFW, because it was preceded by Respondent's unlawful refusal to bargain, was reached too far outside the makewhole period, and was unexecuted. The Respondent's position would have resulted in nothing being owed. The ALJ went on to find that a 1995 contract between the UFW and Meyer Tomato in the Visalia area was an appropriate measure of makewhole. The ALJ recommended that the workers receive an increase of 2.5 percent of their gross wages for the period July 12, 1993 to July 11, 1994, and an increase of 5.4 percent for the remainder of the makewhole period. The ALJ included no award for fringe benefits. The ALJ recommended calculating interest "as usual;" however, he also stated that if the principal to be paid was close to the amount in the GC's makewhole specification, interest should be cut off in 1997 based on the agency's mixed signals as to how it was going to proceed with the case.

### **First Board Decision and Order (38 ALRB No. 4)**

The Board upheld the ALJ's rejection of the 1998 agreement between the parties as an appropriate comparable contract for the purpose of calculating makewhole; however, the Board rejected the ALJ's use of the 1995 Meyer/Visalia contract as a comparable contract. The Board reversed the ALJ's conclusion that the GC's contract averaging methodology was unreasonable on its face. The Board found the GC's contract averaging approach to be reasonable under the circumstances of this case. The Board made

modifications to the methodology, namely by eliminating a 5 percent increase for miscellaneous fringe benefits (holiday vacation, etc.) because the contracts included in the averaging triggered such benefits only after more hours were worked than are contained in a season for hand-picked tomatoes, and by adding 5 additional contracts to the list of those to be averaged. In addition, the Board found that the GC made errors in the application of the methodology to the payroll records, and made appropriate adjustments. As a result modified figures to be applied to the payroll records are as follows: a 2.52 percent increase for 1993 and a compounded 2.25 percent increase for 1994. Adjusted medical and pension benefits as dollar per hour worked are: Medical \$0.86; Pension \$0.09. With respect to paid holidays, the Board directed that where it can be verified that a worker worked five days in the two weeks preceding either the July 4 or Labor Day holiday, that worker shall be given the equivalent of 8 hours pay. With respect to interest, the Board found in light of the unique circumstances presented by the extraordinary delay in enforcement, the award of interest would be contingent on the employees being located.

The Board remanded the matter to the ALRB Regional Office for the issuance of a revised makewhole specification calculated in accordance with its decision.

#### **Decision on Revised Makewhole Specification (38 ALRB No. 12)**

On October 16, 2012, the GC issued a revised makewhole specification. The Respondent issued its answer to the specification on November 5, 2012. In sum, the GC's revised makewhole award was \$229, 663 with interest in the amount of \$294, 027. The GC included mathematical changes based on re-examination of three of the contracts which then increase the medical benefit. The GC also changed the calculation of interest based on the National Labor Relations Board's (NLRB) decision in *Kentucky River Medical Center* (2010) 356 NLRB No. 8.

Upon reviewing the revised specification and answer, the Board found that it was unable to issue a final Decision and Order in this matter. Rather, the Board remanded the revised specification back to the GC with instructions to conform it to the discussion in 38 ALRB No. 12.

First, the Board found that the review of the three contracts showed one was incorrectly inputted and a new adjusted average medical benefit amount of \$0.88 per hour was appropriate. Therefore the Board ordered the GC to recalculate the specification using the \$0.88 per hour figure. Second, the Board found that the GC was incorrect in calculating the interest consistent with the NLRB decision in *Kentucky River Medical Center* (2010) 356 NLRB No. 8. In this decision, the NLRB adopted a new policy under which interest on backpay would be compounded on a daily basis, replacing the simple interest method previously utilized. The Board found that in a subsequent decision, *Rome Electrical Services, Inc.* (2010) 356 NLRB No. 38, the NLRB clarified that the new policy announced in *Kentucky River Medical Center* did not apply to cases that were

already in the compliance phase on the date that decision issued. The present case has been in the compliance phase since the Court of Appeal affirmed the Board's decision and order in 1995, so the Board found that *Kentucky River Medical Center* clearly does not apply to the interest calculation in the revised makewhole specification.

The Board therefore remanded the revised makewhole specification for calculation of interest pursuant to *E. W. Merritt Farms* (1988) 14 ALRB No. 5. The Board, in its previous decision, ordered that interest be collected only for employees who are located. Therefore, in the further revised specification, the Board ordered that the makewhole principal amount and interest amount should be clearly listed as two separate figures for each employee.

The Board also noted the following incorrect statement by the GC in the revised makewhole specification: "the Board decided that all interest should be returned to the grower where the worker could not be found by the ALRB." The Board emphasized that the Board's order did not direct that interest on the entire principal be collected from the employer only to be returned should employees not be located. Rather, the Board clearly directed that the award of interest would be contingent upon employees being located. In other words, the Board ordered that the entire makewhole principal be collected from the employer, but that interest be awarded and collected only as employees are located.

### ***SOUTH LAKES DAIRY FARM (2013) 39 ALRB No. 1***

#### **Background**

On August 30, 2012, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in which he dismissed all the allegations in the complaint, concluding that the evidence did not show that South Lakes Dairy Farm (Employer) committed unfair labor practices by discharging employees Gabriel Saucedo, Rodolfo Macias, Jose M. Barajas, Adan Serna Herrera, Juan Carlos Mayo, Jose Robles, Bernabe Ruiz, and Luis Herrera. Saucedo was discharged after three warnings for violating company rules. Macias was discharged for leaving work early without proper notice because Employer felt it was unjustifiable to maintain him and discharge other employees for being inefficient. Barajas, Serna, Mayo, Robles, Ruiz and Herrera were discharged because Employer was seeking more efficient employees. The ALJ concluded that the General Counsel failed to prove its prima facie case because it failed to show by a preponderance of the evidence employer knowledge of the employees' union activities or employer knowledge that the protected, concerted activities of Macias and Ruiz were protected and concerted. The General Counsel timely filed exceptions to the ALJ's decision.

#### **Board Decision**

The Board affirmed the ALJ's decision, noting that the ALJ's decision was heavily dependent on credibility determinations resulting in the testimony of many of the General Counsel's witnesses being disregarded as unreliable and therefore not credited. The

Board's review of the record revealed no basis for disturbing the ALJ's credibility determinations. Therefore, the complaint was dismissed in its entirety.

### ***SOUTH LAKES DAIRY FARM (2013) 39 ALRB No. 2***

#### **Background**

On February 1, 2013, the General Counsel timely filed a Motion for Reconsideration of the Board's decision in 39 ALRB No. 1. The General Counsel argued that, pursuant to *Superior Farming Co. v. Agricultural Labor Relations Board* (1984) 151 Cal. App. 3d 100 (*Superior Farming*), legal arguments not fully developed below regarding questions of procedural fairness present extraordinary circumstances meriting the Board's consideration of these arguments for the first time in a motion for reconsideration. Specifically, the General Counsel argued that the hearing process resulting in 39 ALRB No. 1 was fundamentally unfair and disadvantageous to agricultural workers and the Board was excessively deferential to the Administrative Law Judge's (ALJ) credibility determinations.

#### **Board Decision**

The Board denied the General Counsel's motion for failure to demonstrate extraordinary circumstances. The Board held that *Superior Farming* did not stand for the proposition cited by the General Counsel and, in any event, a motion for reconsideration was not the proper avenue by which to raise for the first time issues of procedural unfairness of which the General Counsel must have been aware prior to the close of hearing. The General Counsel did not explain the failure to raise these issues in its post-hearing brief or in its brief in support of its exceptions. The Board held that, even if it were inclined to consider the motion, the General Counsel alleged facts not in evidence and not attested to in a declaration filed under penalty of perjury. The Board required that future motions alleging facts not in evidence be accompanied by a declaration filed under penalty of perjury by someone with personal knowledge attesting to such facts.

The Board did not reconsider its rulings on the ALJ's credibility determinations, noting that any deference the Board gave to the ALJ's credibility determinations was based on a thorough review of the record and an absence of "well-supported inferences from the record as a whole" with which the ALJ's credibility determinations might have conflicted. (*United Farm Workers of America (Ocegueda)* (2011) 37 ALRB No. 3; *S & S Ranch* (1996) 22 ALRB No. 7).

### ***RBI PACKING, LLC (2013) 39 ALRB No. 3***

#### **Background**

On February 4, 2013, the United Farm Workers of America (UFW) filed an election petition with the Agricultural Labor Relations Board's (ALRB or Board) Visalia Regional Office naming only Gila Farm Land, LLC (Gila) as the employer. Upon learning that Gila leased the land in question to RBI Packing, LLC (RBI), the UFW filed a second petition naming both Gila and RBI as employers. Following investigation of the

petition, the Acting Regional Director named only RBI as the employer in the election notice.

The election was held on February 9, 2013 with the tally of ballots producing the following results: “UFW,” 51; “No Union,” 0; “Unresolved Challenged Ballots,” 0. On February 15, 2013, the UFW timely filed an objection to the election pursuant to Section 20365(c) of the Board’s regulations on the grounds that Gila should have also been a named party to the election, albeit not as a joint employer. The UFW argued that, as a land owner and because of its ability to decide labor relations affecting the bargaining unit, Gila was the stable party to which the bargaining obligation should attach. The UFW argued further that the Board has traditionally found that it should attach the bargaining obligation to the party with the stability and long-term interest in the land used for agriculture. The UFW also argued that Gila had the ability to affect labor relations between its lessees and the lessee’s employees such that it should be considered an employer.

### **Board Decision**

The Board dismissed the objection for failure to allege facts that, if uncontroverted or unexplained, would lead to the conclusion that Gila has statutory employer status vis-à-vis the employees of RBI. The Board has already concluded that land ownership alone does not confer employer status, and a land owner must act as an employer for any employees working on his or any other land owner’s land, or must act in the interest of an employer in relation to its agricultural employees, to be considered a statutory employer. (*Tex-Cal Land Management, Inc.* (1986) 12 ALRB No. 26 at pp. 28-29.) Moreover, the Board has found that it should attach the bargaining obligation to the party with the stability and long-term interest in the *ongoing agricultural operation*. (*Rivcom Corporation v. Agricultural Labor Relations Board* (1983) 34 Cal.3d 743, 768 (emphasis added).) The Board concluded that, regardless of the terms of the lease between Gila and RBI, successorship status, and any ensuing bargaining relationship resulting therefrom, is a question of law; it cannot be avoided or conferred solely by contract. (*San Clemente Ranch, Ltd. v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 874, 886.)

### ***D’ARRIGO BROTHERS COMPANY OF CALIFORNIA (2013) 39 ALRB No. 4***

#### **Background**

In a case in which related election objections and unfair labor practice allegations were consolidated for hearing, an administrative law judge (ALJ) held D’Arrigo Bros. of California (D’Arrigo) violated section 1153, subdivision (a) of the Agricultural Labor Relations Act (ALRA) by instigating a decertification petition and supporting and assisting the gathering of signatures for the petition in five crews. In addition, the ALJ found that D’Arrigo’s delay in providing an address list for a group of laid off workers interfered with their right to receive adequate notice of the election. The ALJ further concluded that D’Arrigo’s unlawful or objectionable conduct tainted the entire decertification process, thus warranting the setting aside of the decertification election

and dismissal of the decertification petition. D'Arrigo timely filed exceptions to the ALJ's decision. The United Farm Workers (UFW) filed one exception, arguing that the ALJ erred in ruling that the UFW's request for mandatory mediation and conciliation (MMC) was not yet ripe.

### **Board Decision**

The Board reversed the ALJ's decision with regard to four issues: 1) Because the record reflected no connection between the actions of John Snell in suggesting decertification to one employee and the eventual decertification effort, the Board found that no unlawful instigation was proven; 2) The Board found that there was no unlawful delay in providing an address list for the workers laid off the week of November 13, 2010, because it was not shown that the brief delay prevented the mailing of an election notice to those employees; 3) The Board found that the actions of Florentino Guillen in soliciting signatures during lunch time could not be imputed to D'Arrigo because the evidence did not establish that he reasonably would have been viewed as acting on behalf of management; and 4) The Board found that the ALJ erred in ruling that the attorney-client privilege applied to meetings between UFW counsel and union member witnesses. However, the Board also found that D'Arrigo failed to demonstrate how it was prejudiced by the ruling. Finding this case analogous to *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2, the Board found that its affirmance of unlawful assistance in four crews, about 10 percent of eligible voters, was sufficient to warrant dismissing the decertification petition and setting aside the election. Lastly, the Board rejected the UFW's contention that referral to MMC is an available remedy in an unfair labor practice case.

### **Concurrence and Dissent**

Member Mason concurred with the majority in all respects with the exception of the conclusion that the record supports invalidating the decertification petition and setting aside the election. Member Mason would overrule *Gallo Vineyards, Inc.* (2004) 30 ALRB No. 2 and find that the unlawful assistance proven in this case was insufficient to invalidate the decertification petition. He would instead order that the ballots be counted and, in light of the tally of ballots, evaluate the effect of the unlawful assistance on free choice in the election itself under the outcome-determinative standard normally applied to election misconduct.

### ***GERAWAN FARMING, INC. (2013) 39 ALRB No. 5***

#### **Background**

The United Farm Workers of America ("UFW") filed a declaration on March 29, 2013 requesting Mandatory Mediation and Conciliation ("MMC") with the employer, Gerawan Farming, Inc. (the "Employer") pursuant to Labor Code section 1164 (a)(1). The Employer timely filed an answer to the declaration opposing referral to MMC. The Employer argued that the declaration should be dismissed asserting that the UFW failed to meet the requirements of Labor Code 1164.11, forfeited its rights by abandoning the employees it had been certified to represent, and that the MMC process violated the

Employer's constitutional due process rights. The Employer requested that an expedited hearing be held to resolve factual disputes if the declaration was not dismissed.

### **Board Decision**

The Board referred the case to MMC finding that all the statutory requirements for referral to MMC were met. The Board held that, contrary to the Employer's assertion, the UFW was not required to show that it bargained in good faith for at least one year after the initial request to bargain. The Board noted that Labor Code section 1164.11, subdivision (a) contains no "good faith and sustained effort to bargain" requirement but requires only that the parties failed to reach an agreement for at least one year after the initial bargaining request. The Board held that the unfair labor practice ("ULP") cases identified by the UFW (*Gerawan Ranches* (1992) 18 ALRB No. 5 and *Gerawan Ranches* (1992) 18 ALRB No. 16), which involved multiple ULPs committed in connection with the election through which the UFW was certified, including a refusal to bargain in the post-election, pre-certification period, were sufficient to show that the Employer committed ULPs within the meaning of Labor Code 1164.11. Citing well-established precedent, the Board held that the Employer's argument that the UFW had forfeited its rights by allegedly abandoning the workers was not legally viable. The Board held that, under Article III, Section 3.5 of the California Constitution, which bars administrative agencies from declaring a statute unconstitutional absent an appellate court decision, the Board did not have authority to rule on constitutional arguments raised by the Employer. Finally, the Board ruled that there were no factual disputes that warranted the setting of an expedited hearing.

### ***PREMIERE RASPBERRIES, LLC dba DUTRA FARMS (2013) 39 ALRB No. 6***

#### **Background**

On January 7, 2012, Administrative Law Judge (ALJ) Douglas Gallop issued a decision in which he held, *inter alia*, that Premiere Raspberries, LLC, dba Dutra Farms (Employer) did not unlawfully terminate Dahlia Santiago (Santiago) but did wrongfully refuse to reinstate her pursuant to a court order. Employer refused to reinstate Santiago pending an appeal of the court's order and Labor Code section 1160.4, subdivision (c), which precludes a stay of injunctive relief granted pursuant to subdivision (b) (2) of the same section. The General Counsel, Employer and Charging Party United Farm Workers of America (UFW) timely filed exceptions.

#### **Board Decision**

The Board denied all the exceptions except for two. The Board overturned the ALJ's decision that Santiago was not wrongfully terminated because the weight of the evidence showed that the reason offered by Employer for her termination was pretext. The Board clarified that the General Counsel had established a *prima facie* case. Applying the factors enumerated in *Aukeman Farms* (2008) 34 ALRB No. 2, the Board then concluded that the inconsistent testimony from Employer's general manager showed that the meeting, and events during that meeting, he claimed to have relied upon in deciding to



terminate Santiago could not have happened. Given that Employer never questioned Santiago about the acts leading to her termination prior to her termination and the severity of the discipline chosen given Santiago's long tenure with Employer without discipline, the Board concluded that Employer's proffered reason was pretext. In the absence of any other reason offered and in light of the *prima facie* case, the Board found no reason to continue a *Wright Line* analysis and held that Santiago was unlawfully terminated.

The Board also reversed the ALJ's conclusion that Employer committed an unfair labor practice by refusing to reinstate Santiago pending appeal of the court order requiring her reinstatement and of Labor Code section 1160.4, subdivision (c). The allegation regarding Employer's refusal to reinstate Santiago was not the subject of a charge, although it was alleged in the complaint. The ALJ had assured Employer that, absent a finding of violence or demeaning behavior in its refusal to reinstate Santiago, the ALJ would not find that the refusal to reinstate Santiago pending appeal was an unfair labor practice, and the ALJ ceased taking evidence on the issue during the General Counsel's case in chief, precluding litigation of the issue. The Board reversed, holding the ALJ's conclusion of law as "contrary to the elementary constitutional principles of procedural due process." (*Sunnyside Nurseries, Inc. v. ALRB* (1979) 93 Cal. App. 3d 922, 933-934.)

## ***ARNAUDO BROTHERS, INC. (2013) 39 ALRB NO. 7***

### **Background**

On May 28, 2013, the United Farm Workers of America (UFW) filed a request with the Agricultural Labor Relations Board (ALRB or Board) seeking an order to require the mediator to proceed with the mediation in this Mandatory Mediation and Conciliation (MMC) matter. The mediation had been held in abeyance by the mediator pending resolution of issues bearing on representation. Employer Arnaudo Brothers, Inc. (Employer) filed a reply to the UFW's request in which it argued that California Code of Regulations, Title 8, section 20407 relieved the Board of any legal authority to issue the order requested by the UFW).

### **Board Decision**

The Board granted the UFW's request and ordered the mediator to resume the mediation. Section 20407 of the Board's regulations states that "[m]ediation shall proceed in accordance with California Labor Code section 1164, subdivisions (b), (c) and (d)." Neither the Board's regulations nor Labor Code section 1164 provides for such a broad grant of authority to a mediator that he or she can completely stop the MMC process. Matters such as questions of representation that might or could affect the MMC process would be resolved by the Board.

**CORRALITOS FARMS, LLC (2013) 39 ALRB No. 8**

**Background**

On September 14, 2012, the United Farmworkers of America (UFW or Petitioner) filed a petition for representation seeking an election among the agricultural employees of Corralitos Farms, LLC (Employer) in Watsonville, California.

On September 19, 2012, an election was held with the following results:

United Farm Workers	154
No Union	187
Unresolved Challenged Ballots	19
TOTAL	360

On September 26, 2012, the UFW filed an objection petition with the Board pursuant to Labor Code section 1156.3(e). The UFW asserted that the employer’s misconduct rendered slight the chances of a new election reflecting the free and fair choice of employees, and requested that the Board certify the UFW as the collective bargaining representative pursuant to section 1156.3(f).

**The Board Decision (2012) 38 ALRB No. 10**

On October 16, 2012, The Board set the UFW’s objections for an investigative hearing. The hearing on objections was consolidated with a hearing on a related unfair labor practice (ULP) complaint issued by the General Counsel.

**ALJ Decision**

On March 1, 2013, the ALJ issued a decision dismissing the UFW’s objection petition in its entirety, denying the UFW’s request for certification pursuant to 1156.3 (f) of the ALRA, and dismissing the ULP complaint. Given the nature of the allegations and the evidence offered at the hearing, the ALJ’s factual findings were highly dependent upon his credibility determinations. He concluded that many of the UFW’s objections should be dismissed because there was a lack of credible evidence establishing that alleged misconduct occurred. The ALJ held that the credible evidence established that Employer did not make unlawful threats during a strike conducted by the UFW on August 4, 2012. The ALJ found that the Employer did not confer an unlawful benefit on workers by eliminating the requirement that they pick berries in wet rows immediately following the August 4, 2012 strike, because the change in practice was not unlawfully motivated. The ALJ found that Employer’s consultant, Martin Montelongo did not threaten workers with job loss, nor did he make any material misrepresentations of facts. The ALJ dismissed an objection by the UFW which urged a total ban on employers conducting group “captive audience” meetings during election campaigns. The ALJ pointed out that if the Board chose to adopt the NLRB’s ban on meetings conducted within 24-hours of an election (*Peerless Plywood Co.* (1953) 107 NLRB 427), such a change should be implemented prospectively and not in the instant case.

The allegations of misconduct in both the General Counsel's complaint and the UFW's objections, such as the interference with Union access, were primarily attributed to employees who were alleged to be acting as agents of the Employer. In addition, the UFW argued that the punchers in each harvesting crew were statutory supervisors. The ALJ found that the record failed to establish that the punchers were supervisors under section 1140(j) of the Act. With respect to agency, the ALJ found that the evidence failed to establish that Employer held the punchers to other workers as speaking on behalf of management, or that employees would reasonably perceive this. He cited *Omnix International Corporation d/b/a Waterbed World* (1987) 286 NLRB 425 as authority for his finding. Finally, the ALJ dismissed an allegation in the General Counsel's complaint that Employer coerced employees into signing a post-election petition denying that Employer engaged election misconduct. The ALJ found that there was no evidence that workers would have reasonably been coerced into signing the petition, and there was no evidence that Employer was involved in the drafting and circulation of the petition.

### **The Board Decision**

The Board affirmed the ALJ's credibility determinations, factual findings and legal conclusions in full with the following modifications: 1) The Board found the ALJ's analysis of whether certain workers were statutory supervisors to be truncated, and provided a full discussion of that issue; 2) The Board found that the test for agency applied by the ALJ and the test found in *Vista Verde Farms v. ALRB* (1981) 29 Cal.3d 307 were essentially the same, and the facts in the instant matter did not establish agency under either test; and 3) The Board rejected the UFW's argument urging a total ban on all "captive audience" speeches made by an employer during an election campaign as doing so would be contrary to established NLRB precedent. The Board held that the *Peerless Plywood* rule prohibiting captive audience speeches within 24 hours of an election did not apply under the ALRA. The Board distinguished this rule because of the unique circumstances surrounding ALRB elections. The Board also stated that applying this rule would impinge on the current access unions are afforded under the ALRA, including within 24 hours of the election.

### ***ARNAUDO BROTHERS, LP* (2013) 39 ALRB No. 9**

#### **Background**

On May 24, 2013, Francisco Napoles (the "Petitioner") filed a petition for decertification (the "Petition") in the Visalia Region of the Agricultural Labor Relations Board. That same day, the Acting Regional Director (the "Regional Director") issued a Notice of Decision to Block Election. The Regional Director blocked the election on the basis of an outstanding unfair labor practice complaint, deficiencies in the showing of interest supporting the Petition, alleged employer initiation and assistance, and the pendency of Mandatory Mediation and Conciliation ("MMC") proceedings. The Petitioner and Arnaudo Brothers (the "Employer") filed requests for review of the Regional Director's decision with the Agricultural Labor Relations Board (the "Board").

### **Board Decision**

The Board granted the requests for review and affirmed the Regional Director's decision with modifications and clarifications. The Board found that, under the Board's regulations, the Regional Director was required to determine, based upon an investigation, whether the Petition was valid before deciding whether, in the event that the Petition was valid, the election should be blocked. Her failure to clearly do so was erroneous. The Board further found that, even if the decision to block was not premature, the Regional Director's conclusion that the showing of interest was insufficient and tainted by employer misconduct as well as the pendency of concurrent MMC proceedings were not valid reasons to block an election. The Board did conclude, however, that the outstanding unfair labor practice complaint against the Employer, which alleged that the Employer had provided an incomplete response to a request for information and had refused to meet with the union at reasonable times for approximately six months, would be sufficient to block an election. The Board concluded that, because the unfair labor practice complaint would ultimately block an election, no purpose would be served by returning the petition to the Regional Director for a determination as to its validity. Accordingly, the Board upheld the Regional Director's decision to block the election and dismissed the Petition.

**Board Administrative Orders Fiscal Year 2011-2012**

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2011-13	D'Arrigo Bros. Co. of California, A California Corporation	2010-RD-004-SAL 2010-CE-50-SAL	7/1/2011	Order Setting Due Date For Opposition To Respondent's Application For Permission To Appeal Ruling Of Administrative Law Judge
2011-14	D'Arrigo Bros. Co. of California, A California Corporation	2010-RD-004-SAL 2010-CE-50-SAL	7/11/2011	Order Denying Application For Permission To Appeal Ruling Of Administrative Law Judge
2011-15	D'Arrigo Bros. Co. of California, A California Corporation	2010-RD-004-SAL 2010-CE-50-SAL	7/13/2011	Order Denying General Counsel's Appeal of Denial of Request For Continuance
2011-16	San Joaquin Tomato Growers, Inc. A California Corporation	93-CE-38-VI	8/16/2011	Order Granting Special Permission To Appeal Ruling of The ALJ; Order Granting Continuance
2011-17	Nurserymen's Exchange Inc.	2010-RC-003-SAL	9/12/2011	Order Setting Due Date For Responses To Motion To Dismiss Petition For Certification/Motion To Continue Investigative Hearing
2011-18	D'Arrigo Bros. Co. of California, A California Corporation	2010-RD-004-SAL 2010-CE-50-SAL	9/12/2011	Order Denying Application For Special Permission For Interim Appeal
2011-19	Nurserymen's Exchange Inc.	2010-RC-003-SAL	9/14/2011	Order Denying Motion To Dismiss Petition For Certification And Motion To Continue Investigative Hearing
2011-20	Nurserymen's Exchange Inc.	2010-RC-003-SAL	9/16/2011	Order Denying Motion For Reconsideration
2011-21	Sun World International, Inc.	01-CE-613-EC(R)	11/17/2011	Order Granting Motion To Make Cases Eligible For Payout From The AERF; Order Granting Motion To Close Cases

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2011-22	San Joaquin Tomato Growers, Inc.	2011-MMC-1	12/2/11	Order To Show Cause
2011-23	Kawahara Nurseries, Inc.	2010-RC-1-SAL	12/8/11	Order Setting Time For Response To Motion For Reconsideration
2011-24	Kawahara Nurseries, Inc.	2010-RC-1-SAL	12/21/11	Order Denying Motion For Reconsideration
2012-01	San Joaquin Tomato Growers	2011-MMC-1	1/27/12	Order Denying Request For Ruling On The Pleadings
2012-02	George Arakelian Farms	78-CE-11-EC	1/27/12	Order Granting Motion To Make Cases Eligible For Payout From The AERF; Order Granting Motion To Close
2012-03	Kawano, Inc.	76-CE-5-R, et al.	3/6/12	Order Granting Motion To Make Cases Eligible For Payout From The AERF Fund; Order Granting Motion To Close Cases
2012-04	Ukegawa Brothers, Inc., a Corporation	75-CE-59-R	3/23/12	Order Granting Motion To Make Cases Eligible For Payout From The AERF Fund; Order Granting Motion To Close Cases
2012-05	Ace Tomato Company, Inc., a California Corporation	2012-MMC-1	3/29/12	Order Directing Parties To Mandatory Mediation & Conciliation
2012-06	Sun World International, LLC., a.k.a. Sun World	2012-UC-1-VIS	5/4/12	Order Denying Request For Review
2012-07	San Joaquin Tomato Growers, Inc. a California Corporation	93-CE-38-VI	6/20/12	Order Setting Due Date For Response To UFW's And General Counsel's Motions For Reconsideration

**Board Administrative Orders Fiscal Year 2012-2013**

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2012-08	San Joaquin Tomato Growers, Inc.	93-CE-38-VI	7/6/12	Order Denying Motions for Reconsideration
2012-09	George Amaral Ranches, Inc.	2012-RC-001-SAL	7/24/12	Order Granting Employer's Request to Withdraw Election Objections; Order Granting Employer's Request to Cancel Investigative Hearing; Certification of Representative
2012-10	Ace Tomato Company, Inc.,	2012-MMC-001	8/2/12	Order Setting Response Time
2012-11	Gargiulo, Inc.	2012-RC-001-VIS	8/3/12	Order Denying Employer's Request to Amend Certification of Bargaining Representative
2012-12	Ace Tomato Company, Inc.,	2012-MMC-001	8/8/12	Order Requiring Further Response on Compliance with Prior Board Order
2012-13	D. Papagni Fruit Company	2012-MMC-02	8/24/12	Order Directing Parties to Mandatory Mediation and Conciliation
2012-14	H & R Gunland Ranches, Inc.	2009-CE-063-VIS, et al.	9/14/12	Order Setting Due Date for Filing Opposition to General Counsel's Request for Special Permission to Appeal Administrative Law Judge's Ruling
2012-15	Premiere Raspberries, LLC, dba Dutra Farms	2012-CE-003-SAL, et al.	9/20/12	Order Setting Due Date for Filing Opposition to General Counsel's Request for Special Permission to Appeal Administrative Law Judge's Ruling
2012-16	Ace Tomato Company, Inc.	2012-CE-024-VIS	10/4/12	Order Granting Leave to Seek Court Order Requiring Compliance with Investigative Subpoena
2012-17	Ace Tomato Company, Inc.	2012-CE-007-VIS	10/4/12	Order Granting Leave to Seek Court Order Requiring Compliance with Investigative Subpoena

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2012-18	Ace Tomato Company, Inc.	93-CE-37-VI	10/4/12	Order Granting Leave to Seek Court Order Requiring Compliance with Investigative Subpoena
2012-19	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	10/24/12	Order Granting General Counsel's Motion to Consolidate ULP Complaint with Election Objections
2012-20	H & R Gunland Ranches, Inc.	2009-CE-063-VIS, et al.	10/25/12	Order Denying General Counsel's Special Appeal of Administrative Law Judge's Ruling
2012-21	Ace Tomato Company, Inc.	2012-CE-024-VIS	10/26/12	Order Setting Response Time
2012-22	Ace Tomato Company, Inc.	2012-CE-024-VIS	11/1/12	Order Affirming ALJ Decision Staying Proceedings
2012-23	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	11/7/12	Order Setting Due Date for Filing Responses to Proposed Intervenor Juan Carlos Ramirez' Application for Special Permission to File Interim Appeal of the ALJ's Denial of Ramirez' Motion to Intervene
2012-24	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	11/7/12	Order Clarifying Board's October 16, 2012 Order Setting Objections for Hearing
2012-25	Ace Tomato Company, Inc.	2012-CE-024-VIS	11/8/12	Order Denying Respondent's Request for Leave to File Response to General Counsel's Request for Deposition of K. Janssen, the ALJ's Provisional Ruling Thereon, and Any Supplemental Declaration by General Counsel
2012-26	Ace Tomato Company, Inc.	2012-CE-007-VIS, et al.	11/8/12	Order Denying Respondent's Request for Leave to File Response to General Counsel's Request for Deposition of K. Janssen, the ALJ's Provisional Ruling Thereon, and Any Supplemental Declaration by General Counsel



<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2012-27	Ace Tomato Company, Inc.	93-CE-37-VI	11/8/12	Order Denying Respondent's Request for Leave to File Response to General Counsel's Request for Deposition of K. Janssen, the ALJ's Provisional Ruling Thereon, and Any Supplemental Declaration by General Counsel
2012-28	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	11/9/12	Order Denying Proposed Intervenor Juan Carlos Ramirez' Application for Special Permission to File Interim Appeal of the ALJ's Denial of Ramirez' Motion
2012-29	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	11/13/12	Order Denying Application for Special Permission to Appeal ALJ's Ruling Regarding Respondent's Cell Phone Records
2012-30	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	11/13/12	Order Denying the UFW's Application for Special Permission for Interim Appeal of ALJ's Rulings; Order Striking General Counsel's Joinder
2012-31	George Amaral Ranches, Inc.	2012-MMC-03	11/20/12	Order Directing Parties to Mandatory Mediation and Conciliation
2012-32	Corralitos Farms, LLC	2012-RC-004-SAL, et al.	11/26/12	Order Denying Proposed Intervenors' Application for Special Permission to File Interim Appeal of the ALJ's Denial of Their Motion to Intervene
2013-01	Arnaudo Bros., Inc.	2012-CE-030-VIS	1/3/13	Order Setting Response Time
2013-02	Arnaudo Bros., Inc.	2012-CE-030-VIS	1/10/13	Order Granting the General Counsel's Request to Seek Court Order Requiring Compliance with Investigative Subpoena
2013-03	Ace Tomato Company, Inc.	93-CE-37-VI, 2012-CE-007-VIS, et al.	1/18/13	Order Remanding Issue of Location of Deposition to Administrative Law Judge

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-04	Bud Antle, Inc.	2012-CE-007-SAL	1/25/13	Order Granting General Counsel's Request for Permission to Appeal Order of Administrative Law Judge; Order Affirming Administrative Law Judge's Order Denying Motion for Default Judgment
2013-05	Ace Tomato Company, Inc.,	93-CE-37-VI	1/29/13	Order Denying Ace Tomato Company, Inc.'s Application for Special Permission to Appeal Administrative Law Judge's January 10, 2013 Order Rejecting Respondent's Petition to Revoke Notices in Lieu of Subpoenas
2013-06	Bud Antle, Inc.	2012-CE-056-SAL	2/1/13	Order Setting Response Time
2013-07	Ace Tomato Company, Inc.	93-CE-37-VI	2/1/13	Order Setting Response Time
2013-08	Arnaudo Brothers, Inc.	2013-MMC-01	2/13/13	Order Directing Parties to Mandatory Mediation and Conciliation
2013-09	Ace Tomato Company, Inc.	93-CE-37-VI	2/13/13	Order Denying General Counsel's Application for Special Permission to Appeal Administrative Law Judge's January 25, 2013 Order Regarding Petition to Revoke Notice in Lieu of Subpoena
2013-10	Ace Tomato Company, Inc.	93-CE-37-VI	2/14/13	Order Granting General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Subpoenas Duces Tecum
2013-11	Bud Antle, Inc.	2012-CE-056-SAL	2/14/13	Order Granting General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Investigative Subpoena
2013-12	San Joaquin Tomato Growers, Inc.	93-CE-38-VI	2/27/13	Order Remanding General Counsel's Second Revised Makewhole Specification to Correct Interest Calculation

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-13	San Joaquin Tomato Growers, Inc.	2011-CE-021-VIS, et al.	3/6/13	Order Setting Due Date for Filing Opposition to General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Investigative Subpoena
2013-14	Ace Tomato Company, Inc.	93-CE-37-VI	3/11/13	Order Setting Due Date for Opposition to Respondent's Application for Special Permission to Appeal Administrative Law Judge's March 4 and 7, 2013 Order Denying Respondent's Request for Deposition of Dr. Philip Martin
2013-15	San Joaquin Tomato Growers, Inc.	2011-CE-021-VIS, et al.	3/12/13	Order Setting Due Date for Filing Opposition to General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Investigative Hearing
2013-16	San Joaquin Tomato Growers, Inc.	2011-CE-021-VIS, et al.	3/21/13	Order Granting General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Investigative Hearing
2013-17	San Joaquin Tomato Growers, Inc.	2011-CE-021-VIS, et al.	3/21/13	Order Granting General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Investigative Hearing
2013-18	Ace Tomato Company, Inc.	93-CE-37-VI	3/21/13	Order Granting Respondent's Application for Special Permission to Appeal Administrative Law Judge's March 4 and 7, 2013 Orders Denying Respondent's Request for Deposition of Dr. Philip Martin; Order Denying Respondent's Request for Deposition
2013-19	Gerawan Farming, Inc.	2013-MMC-002	3/29/13	Order Dismissing Request for Mandatory Mediation and Conciliation

<b>Administration Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-20	Ace Tomato Company, Inc., et al.	93-CE-37-VI	3/23/13	Order Granting Respondent's Motion for Reconsideration of the Board's March 21, 2013 Order Denying Ace's Request for Deposition of Dr. Philip Martin
2013-21	D'Arrigo Bros. Co. of California	2010-RD-004-SAL 2010-CE-050-SAL	4/24/13	Order Setting Time for Response to Motion for Reconsideration
2013-22	D'Arrigo Bros. Co. of California	2010-RD-004-SAL 2010-CE-050-SAL	5/7/13	Order Denying Respondent/Employer's Motion for Reconsideration/Reopening and Denying Motion for Stay
2013-23	George Amaral Ranches, Inc.	2012-CE-069-SAL, et al.	5/21/13	Order Setting Due Date for Filing Oppositions to General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Investigative Subpoenas
2013-24	Arnaudo Brothers, Inc.	2013-MMC-01	5/29/13	Order Setting Due Date For Employer's Reply
2013-25	George Amaral Ranches, Inc.	2012-CE-069-SAL, et al.	6/4/13	Order Granting General Counsel's Request for Leave to Seek Court Orders Requiring Compliance with Investigative Subpoenas

## Unfair Labor Practice Charges

In fiscal year 2011-2012, one hundred and three (103) ULP charges were filed involving an estimated 9,514 agricultural employees. For fiscal year 2012-2013, one hundred and thirty-six (136) ULP charges were filed involving an estimated 14,333 agricultural employees.

### **FY 2011-2012**

	<b>Charges Against Employers</b>	<b>Charges Against Labor Organizations</b>	<b>Total ULPs</b>
Visalia Regional Office	31	1	32
Salinas Regional Office	55	16	71
<b>Total</b>	86	17	103

### **FY 2012-2013**

	<b>Charges Against Employers</b>	<b>Charges Against Labor Organizations</b>	<b>Total ULPs</b>
Visalia Regional Office	51	8	59
Salinas Regional Office	65	12	77
<b>Total</b>	116	20	136

### ***Complaints***

During the fiscal year 2011-2012, the General Counsel issued five (5) new complaints encompassing twenty (20) charges:

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
1.	2009-CE-057-VIS	Deardoff Family Farms, LLC	7/14/11	Private Party Settlement. Agreement reached on 10/21/11. Case Closed.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
2.	2009-CE-028-VIS 2010-CE-024-VIS 2010-CE-025-VIS 2010-CE-026-VIS 2010-CE-027-VIS 2010-CE-028-VIS 2011-CE-008-VIS	South Lakes Dairy Farms	08/29/11	Hearing held. Board Decision issued on 01/25/13. Case Closed.
3.	2012-CE-003-SAL	Premiere Raspberries, LLC dba Dutra Farms	03/13/12	Board Decision issued on 5/24/13. Respondent filed a Petition for Writ of Review of Decision in the Sixth District Court of Appeal on 6/21/13 (Case No. H039793). Case Pending.
4.	2012-CE-004-SAL 2012-CE-005-SAL 2012-CE-009-SAL 2012-CE-010-SAL 2012-CE-011-SAL 2012-CE-012-SAL 2012-CE-013-SAL 2012-CE-014-SAL 2012-CE-015-SAL	Montalvo Farms, LLC	05/08/12	Informal Bilateral Settlement Agreement reached on 9/20/12. Remedial requirements completed. Case Closed.
5.	2012-CE-003-VIS 2012-CE-004-VIS	Perez Packing, Inc.	05/22/12	Hearing held. Board Decision issued on 12/19/13. Respondent filed a Petition for Writ of Review of Decision in the Fifth District Court of Appeal on 4/10/14 (Case No. F068697). Case Pending.

During the fiscal year 2012-2013, the General Counsel issued ten (10) new complaints encompassing twenty-six (26) charges:

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
1.	2012-CE-029-SAL 2012-CE-003-SAL 2012-CE-030-SAL 2012-CE-038-SAL 2012-CE-046-SAL 2012-CE-047-SAL	Premiere Raspberries, LLC dba Dutra Farms	7/30/12	Amended Consolidated Complaint issued on 8/29/12. Hearing held. Board Decision issued on 5/24/13. Respondent filed a Petition for Writ of Review of Decision in the Sixth District Court of Appeal on 6/21/13 (Case No. H039793). Case Pending.
2.	2012-CE-024-VIS	Ace Tomato Company, Inc.	8/17/12	After Complaint issued, case was stayed due to Stay Order from the Fifth District Court of Appeal (Case No. F065589).
3.	2012-CE-061-SAL 2012-CE-062-SAL 2012-CE-066-SAL	Corralitos Farms, LLC	10/22/12	Hearing held. Board Decision issued on 6/10/13.
4.	2012-CE-007-VIS 2012-CE-028-VIS 2012-CE-029-VIS	Ace Tomato Company, Inc.	10/26/12	Pending Hearing – date to be scheduled by the Executive Secretary.
5.	2012-CE-007-SAL	Bud Antle, Inc.	11/20/12	Hearing held. Board Decision issued on 7/29/13. This matter is now pending full compliance.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
6.	2012-CE-017-SAL 2012-CE-018-SAL 2012-CE-021-SAL 2012-CE-024-SAL 2012-CE-025-SAL 2012-CE-026-SAL 2012-CE-027-SAL 2012-CE-036-SAL	Nakamura Sales Corp.	5/9/13	Informal Bilateral Settlement Agreement reached on 9/12/13. Remedial requirements completed. Closed Case.
7.	2012-CE-030-VIS	Arnaudo Brothers, LP, et al.	5/9/13	Hearing held. Board Decision issued on 4/4/14. Upheld ALJ Decision, except remanded to the ALJ on one issue.
8.	2012-CE-010-VIS	Gurinder S. Sandhu dba Sandhu Poultry and Farming	5/9/13	Hearing held. ALJ Decision on 2/20/14. Pending Exceptions briefs to the Board.
9.	2012-CE-005-SAL	D'Arrigo Brothers Company of California	5/9/13	Hearing scheduled for 5/29/14.
10.	2013-CE-010-VIS	Gerawan Farming, Inc.	5/17/13	Pending Hearing – date to be scheduled by the Executive Secretary.



### ***Unfair Labor Practice Hearings***

During the fiscal year 2011-2012, the ALRB held one (1) hearing on the following unfair labor practice complaint case:

	<b>Case No.</b>	<b>Respondent</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>	<b>No. of Hearing Days</b>
1.	2009-CE-028-VIS	South Lakes Dairy Farms	06/05/12	06/14/12	7

During the fiscal year 2012-2013, the ALRB held five (5) hearings on the following unfair labor practice complaint cases:

	<b>Case No.</b>	<b>Respondent</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>	<b>No. of Hearing Days</b>
1.	2009-CE-063-VIS	H&R Gunlund Ranches, Inc.	8/27/12	9/10/12	10
2.	2012-CE-029-SAL 2013-CE-003-SAL 2012-CE-030-SAL 2012-CE-038-SAL 2012-CE-046-SAL 2012-CE-047-SAL	Premiere Raspberries, LLC dba Dutra Farms	9/11/12	9/19/12	7
3.	2012-CE-003-VIS 2012-CE-004-VIS	Perez Packing, Inc.	11/5/12	11/6/12	2
4.	2012-CE-061-SAL 2012-CE-062-SAL 2012-CE-066-SAL	Corralitos Farms, LLC	11/15/12	12/11/12	17
5.	2012-CE-010-VIS	Gurinder S. Sandhu dba Sandhu Poultry and Farming	11/19/13	11/25/13	5

### ***Compliance Hearings***

During the fiscal year 2011-2012, the ALRB held one (1) hearing on the following compliance case:

	<b>Case No.</b>	<b>Respondent</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>	<b>No. of Hearing Days</b>
1.	93-CE-38-VI	San Joaquin Tomato Growers, Inc.	07/19/11	08/19/11	5

During the fiscal year 2012-2013, the ALRB held one (1) hearing on the following compliance case:

	<b>Case No.</b>	<b>Respondent</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>	<b>No. of Hearing Days</b>
1.	2012-CE-007-SAL	Bud Antle, Inc.	3/12/13	3/13/13	2

### **Settlements**

During the fiscal year 2011-2012, the General Counsel achieved seven (7) settlement agreements which resolved twelve (12) unfair labor practices charges. Of these settlement agreements, four (4) were achieved pre-complaint and three (3) were achieved post-complaint.

During the fiscal year 2012-2013, the General Counsel achieved seven (7) settlement agreements which resolved eighteen (18) unfair labor practice charges. Of these settlement agreements six (6) were achieved pre-complaint, and one (1) was achieved post-complaint.

### ***Pre-Complaint Settlements***

During the fiscal year 2011-2012, the General Counsel reached four (4) pre-complaint settlements.

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
1.	2011-CE-010-VIS 2011-CE-011-VIS 2011-CE-013-VIS	Dobler & Sons, LLC	Informal	10/19/11
2.	2011-CE-016-VIS 2011-CE-022-VIS	E.E Hall, Inc. E.J. Gallo	Private Party	12/02/11
3.	2011-CE-014-VIS 2011-CE-015-VIS	Richard Bagdasarian, Inc. Sun World International, LLC	Private Party	5/25/12
4.	2011-CE-020-VIS	Neufeld Farms	Informal	5/30/12

During the fiscal year 2012-2013, the General Counsel reached six (6) pre-complaint settlements.

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
1.	2011-CE-022-SAL 2011-CE-024-SAL	Lakeside Organic Garden	Informal	12/19/12
2.	2012-CE-012-VIS	Lakeside Dairy	Informal	1/11/13
3.	2012-CE-014-VIS	Grimmway Farms	Informal	1/28/13
4.	2013-CE-006-SAL	Boskovich Farms, Inc.	Informal	3/27/13
5.	2012-CE-038-VIS 2012-CE-039-VIS	Pitman Farms	Informal	4/11/13
6.	2012-CE-058-SAL 2012-CE-067-SAL	Sabor Farms	Informal	6/11/13

***Post-Complaint Settlements***

During the fiscal year 2011-2012, the General Counsel reached three (3) post-complaint settlements.

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
1.	2009-CE-057-VIS	Deardorff Family Farms, LLC	Private Party	10/21/11
2.	2011-CE-005-VIS 2011-CE-006-VIS	Tony Cardoza Dairy	Informal	10/26/11
3.	2008-CL-005-VIS	United Farm Workers of America	Informal	02/17/12

During the fiscal year 2012-2013, the General Counsel reached one (1) post-complaint settlement.

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
1.	2012-CE-004-SAL 2012-CE-005-SAL 2012-CE-009-SAL 2012-CE-010-SAL 2012-CE-011-SAL 2012-CE-012-SAL 2012-CE-013-SAL 2012-CE-014-SAL 2012-CE-015-SAL	Montalvo Farms, LLC	Informal	9/20/12

**Injunctive Relief**

During the fiscal year 2011-2012, the General Counsel sought injunctive relief pursuant to Labor Code Section 1160.4 for two (2) cases and on four (4) occasions.

	<b>Respondent</b>	<b>Underlying ALRB Case No.</b>	<b>Court</b>	<b>Relief Sought</b>	<b>Result</b>	<b>Date of Ruling</b>
1.	Premiere Raspberries, LLC dba Dutra Farms	2012-CE-003-SAL	Santa Cruz County Superior Court	Temporary Restraining Order	Granted	3/15/12
2.	Premiere Raspberries, LLC dba Dutra Farms	2012-CE-003-SAL	Santa Cruz County Superior Court	Preliminary Injunction	Granted	4/13/12
3.	Montalvo Farms, LLC	2012-CE-004-SAL 2012-CE-005-SAL 2012-CE-009-SAL 2012-CE-010-SAL 2012-CE-011-SAL 2012-CE-012-SAL 2012-CE-013-SAL 2012-CE-014-SAL 201 2-CE-015-SAL	Ventura County Superior Court	Temporary Restraining Order	Granted	5/11/12
4.	Montalvo Farms, LLC	2012-CE-004-SAL 2012-CE-005-SAL 2012-CE-009-SAL 2012-CE-010-SAL 2012-CE-011-SAL 2012-CE-012-SAL 2012-CE-013-SAL 2012-CE-014-SAL 201 2-CE-015-SAL	Ventura County Superior Court	Preliminary Injunction	Settled	5/29/12

During the fiscal year 2012-2013, the General Counsel sought injunctive relief pursuant to Labor Code Section 1160.4 for three (3) cases and on six (6) occasions.

	<b>Respondent</b>	<b>Underlying ALRB Case No.</b>	<b>Court</b>	<b>Relief Sought</b>	<b>Result</b>	<b>Date of Ruling</b>
1.	George Amaral Ranches	2013-CE-033-SAL	Monterey County Superior Court	Temporary Restraining Order	Granted	6/19/13
2.	George Amaral Ranches	2013-CE-033-SAL	Monterey County Superior Court	Preliminary Injunction	Settled	7/17/13
3.	Ace Tomato Company, Inc.	2012-CE-024-VIS	San Joaquin Superior Court	Temporary Restraining Order	Denied (Appeal filed and Stayed)	10/5/12
4.	Ace Tomato Company, Inc.	2012-CE-024-VIS	San Joaquin Superior Court	Preliminary Injunction	Denied (Appeal filed and Stayed)	10/5/12
5.	RBI Packing, LLC	2013-CE-002-VIS 2013-CE-015-VIS	Riverside County Superior Court	Temporary Restraining Order	Denied	2/8/13
6.	RBI Packing, LLC	2013-CE-002-VIS 2013-CE-015-VIS	Riverside County Superior Court	Preliminary Injunction	Granted	2/15/13

## **Subpoena Enforcement**

During the last two fiscal years, the General Counsel issued numerous subpoenas requesting documents necessary to further her investigations. Most parties complied with the documents requested in the subpoenas. For those cases where a party did not comply, the General Counsel sought and was granted leave by the Board to enforce the subpoenas in Superior Court on numerous occasions. Most parties complied with the subpoenas before the General Counsel sought subpoena enforcement in Superior Court.

During the fiscal year 2011-2012, the General Counsel did not need to seek any subpoena enforcement actions in Superior Court. During the fiscal year 2012-2013, the General Counsel sought to enforce subpoenas in Superior Court twice connected with three unfair labor charges.

	<b>Respondent</b>	<b>Underlying ALRB Case No.</b>	<b>Court</b>	<b>Result</b>	<b>Date of Ruling</b>
1.	1993-CE-037-VIS 2012-CE-024-VIS 2012-CE-007-VIS	San Joaquin County Superior Court	Ace Tomato Company, Inc.	Stayed	10/5/12
2.	93-CE-037-VI	San Joaquin County Superior Court	Ace Tomato Company, Inc., <i>et al.</i>	Granted	3/8/13

## **Remedies**

In fiscal year 2011-2012, the ALRB collected payments in eight (8) cases for a total award amount of \$29,740.50. Payments were received as a result of Informal Settlement Agreements or Private Party Agreements. In fiscal year 2012-2013, the ALRB collected payments in six (6) cases for a total award amount of \$33,333. Payments were received as a result of Informal Settlement Agreements and Private Party Agreements. In cases where the Board finds a violation, the Board generally orders notice remedies in addition to monetary awards. A notice remedy requires the employer to post, mail and/or read a prepared notice to all agricultural employees so that the employees can become aware of the outcome of the case and their rights.

A negotiated Informal Settlement signed by the parties can include notice remedies and reinstatements, in addition to monetary awards. For fiscal year 2011-2012 a notice reading was conducted in eight (8) cases with a total of 1,286 agricultural employees. A notice mailing was conducted in six (6) cases involving 1,050 agricultural employees. A

notice posting was completed on eight (8) occasions involving eight (8) cases. For fiscal year 2011-2012 there were nine (9) reinstatement orders involving five (5) cases. For fiscal year 2012-2013 a notice reading was conducted in five (5) cases involving approximately 656 agricultural employees. A notice mailing was conducted in six (6) cases involving 1,285 agricultural employees. A notice posting was completed on six (6) occasions involving (5) cases. During the 2012-2013 fiscal year, there were ten (10) reinstatement orders involving five (5) cases.

**FY 2011-2012**

	<b>Case No.</b>	<b>Respondent Name</b>	<b>Award Amount</b>	<b>No. Mailing Notice</b>	<b>No. Reading Notice</b>	<b>No. Re-instated-</b>	<b>Posting Date</b>
1.	07-CE-013-SAL	Premium Packing	\$2,300	N/A	65	1	10/07/11
2.	2009-CE-057-VIS	Deardorff Family Farms LLC	\$2,500	N/A	50	N/A	10/21/11
3.	2011-CE-010-VIS	Dobler & Sons LLC	\$8,228	57	57	1	11/14/11
4.	2011-CE-005-VIS 2011-CE-006-VIS	Tony Cardoza Dairy	\$1,795	11	11	N/A	11/23/11
5.	2008-CL-005-VIS	UFW/ Florentina Cortez	N/A	N/A	200	N/A	4/19/12
6.	2011-CE-016-VIS 2011-CE-022-VIS	E.J. Gallo E.E. Hall	\$586.50	32	N/A	N/A	N/A
7.	2011-CE-020-VIS	Neufeld Farms	\$1,138	18	15	1	6/1/12
8.	2012-CE-038-VIS 2012-CE-039-VIS	Pitman Farms	\$9,786	82	38	6	6/1/12
9.	2011-CE-014-VIS 2011-CE-015-VIS	O.M. Contracting	\$3,407	850	850	N/A	6/11/12
<b>TOTALS</b>			<b>\$29,740</b>	<b>1,050</b>	<b>1,286</b>	<b>9</b>	



**FY 2012-2013**

	<b>Case No.</b>	<b>Respondent Name</b>	<b>Award Amount</b>	<b>No. Mailing Notice</b>	<b>No. Reading Notice</b>	<b>No. Re-instated</b>	<b>Posting Date</b>
1.	2012-CE-050-SAL	Garrouette Farms Inc.	N/A	58	N/A	1	N/A
2.	2012-CE-004-SAL 2012-CE-005-SAL 2012-CE-009-SAL 2012-CE-010-SAL 2012-CE-011-SAL 2012-CE-012-SAL 2012-CE-013-SAL 2012-CE-014-SAL 2012-CE-015-SAL	Montalvo Farms	\$10,718	270	270	1	1/9/13  3/27/13
3.	2012-CE-012-VIS	Lakeside Dairy aka Monteiro Dairies	\$570	28	28	N/A	2/28/13
4.	2012-CE-014-VIS	Grimmway Farms	\$167	100	121	1	3/28/13
5.	2013-CE-006-SAL	Boskovich, Farms, Inc.	\$3,878	108	102	6	4/5/13
6.	2011-CE-024-SAL	Lakeside Organic Garden	\$18,000	721	135	1	5/23/13
<b>TOTALS</b>			<b>\$33,333</b>	<b>1,285</b>	<b>656</b>	<b>10</b>	

## **Agricultural Employee Relief Fund**

Effective January 1, 2002, pursuant to Labor Code section 1161, the Agricultural Employee Relief Fund (AERF or Fund), establishes a trust fund, administered by the Board, to pay agricultural employees entitled to monetary relief under the Act. The administration of the AERF is governed by California Code of Regulations, title 8, section 20299.

Where the Board has ordered monetary relief but the employees entitled to that relief cannot be located to be paid for two (2) years after collection of monies on the employees' behalf, the unpaid sums go into the Fund and are distributed to employees in other cases where collection of the full amount owed to those employees is not possible (for example, when their employer has gone out of business and is unable to pay, has had its debts discharged in bankruptcy, or otherwise has become judgment proof).

Pursuant to section 20299, within 90 days of the close of each fiscal year, the Board determines the amounts to be paid to eligible employees and begins distribution of those amounts. Employee eligibility for the Fund monies continues for two successive annual determinations.

For the 2011 allocation, there was \$23,468.65 available in the Fund for distribution. All of that sum was allocated to the claimants from *Lu-Ette Farms, Inc.*, Case Nos. 80-CE-263-EC, et al., made eligible in FY 2010-2011. The eligibility for these employees ended on September 30, 2013.

For the 2012 allocation, no funds were available to be allocated because of monies allocated to potential claimants in the *Lu-Ette Farms, Inc.* cases.<sup>9</sup>

As June 30, 2013, \$23,468.65 remains in the Fund for distribution.

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<sup>9</sup> In FY 2011-2012, claimants in the following closed cases became eligible: Sun World International, Inc., Case Nos. 01-CE-613-EC(R), et al., Kawano, Inc., Case Nos. 76-CE-51-R, et al., George Arakelian Farms, Inc., Case No. 78-CE-11-EC, and Ukegwa Brothers, Inc., Case Nos. 75-CE-59-R, et al. In FY 2012-2013, no cases were referred to the Fund.