

# **Agricultural Labor Relations Board**

## **Report to the Legislature and to the Governor<sup>1</sup>**



### **Fiscal Year 2013-2014**

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

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

**J. Antonio Barbosa, Executive Secretary**

**Sylvia Torres-Guillén, General Counsel**

**Date Submitted: December 30, 2014**

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<sup>1</sup> Submitted pursuant to Labor Code section 1143. This report is current through June 30, 2014.

<sup>2</sup> Appointed and designated Chairman March 18, 2014

<sup>3</sup> Designated Chair July 22, 2011-March 18, 2014

<sup>4</sup> Reappointed January 17, 2014

<sup>5</sup> Retired December 30, 2013

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## **Introduction**

Almost forty years ago, the Legislature enacted the Agricultural Labor Relations Act (Act), a law granting certain rights to California farm workers in order to “...ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.” The Act’s purpose is simple: Guarantee farm workers full freedom of choice, and prevent and redress unfair labor practices. A groundbreaking law, the essential Act continues to serve California with its unique vision of agricultural labor peace.

This report reflects the hard work, commitment, and accomplishments of the staff and members of the Agricultural Labor Relations Board (ALRB) in implementing the Act over the last fiscal year. I thank my colleagues and staff for their dedication, particularly in light of the ongoing challenges that the Board faces in effectuating the Act’s vision.

The ALRB remains firm in its commitment to enforce the Act. However, it remains that our present ability to face the challenges presented now and for the foreseeable future must be assessed in light of a difficult history. Severe budget cuts experienced by the ALRB in the past three decades even today hinder the ALRB’s ability to perform its functions in a timely, effective manner. In recent years, budgetary relief gained with the support of the Labor and Workforce Development Agency, the Legislature and the Governor has indeed helped, but much more needs to be done. I am grateful for this renewed effort to support the ALRB at this critical time in its history, and I am committed to continue to work with the Executive and Legislative branches of Government to realize the Act’s purposes.

I remain honored to have been appointed by Governor Edmund G. Brown Jr. as Chairman of the ALRB in March of this year. Even as we face the challenges ahead, we build upon the traditions of our past. It is fitting, then, that the ALRB in 2015 will commemorate the 40th anniversary of the historic enactment of the Act in 1975.

I look forward to working with my colleagues on the Board, the General Counsel, the entire staff of the ALRB and the Labor and Workforce Development Agency to meet the challenges before us as we enter our 40th year. We look to the future with a clear purpose and confidence to continue to carry out the Board’s charge.

WILLIAM B. GOULD IV  
Chairman, Agricultural Labor Relations Board

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## **Election Activity**

During fiscal year 2013-2014, labor organizations filed sixty-six (66) notices of intent to take access (NA) and two (2) notices of intent to organize (NO). During fiscal year 2013-2014, labor organizations or farmworkers filed five (5) 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>
8/1/2013	NA	UFW	Martines Fruits & Vegetables, Inc.
8/16/2013	NA	Silvia Lopez	Gerawan Farming, Inc.
10/1/2013	NA	UFW	Castlerock Vineyards
10/1/2013	NA	UFW	Delano Farms
10/1/2013	NA	UFW	Four Star Fruit
10/1/2013	NA	UFW	Hronis, Inc.
10/1/2013	NA	UFW	Kovacevich Farms
10/1/2013	NA	UFW	M. Caratan
10/1/2013	NA	UFW	Pandol & Sons
10/1/2013	NA	UFW	R.B. Sandrini
10/1/2013	NA	UFW	Sun Pacific
10/1/2013	NA	UFW	VBZ
10/2/2013	NA	UFW	Al Pak Labor
10/2/2013	NA	UFW	Aptos Berry Farms, Inc.
10/2/2013	NA	UFW	Azcona Harvesting
10/2/2013	NA	UFW	Bengard Ranch, LLC
10/2/2013	NA	UFW	Central California Tomato Grower
10/2/2013	NA	UFW	Dulcich Farms

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
10/2/2013	NA	UFW	Fowler Packing
10/2/2013	NA	UFW	Garrouette Farms
10/2/2013	NA	UFW	Green Valley Harvesting
10/2/2013	NA	UFW	Growers Express
10/2/2013	NA	UFW	Giumarra Vineyards
10/2/2013	NA	UFW	Hilltown Packing
10/2/2013	NA	UFW	J & E Berry Farms
10/2/2013	NA	UFW	Jasmine Vineyards
10/2/2013	NA	UFW	Laguna Farms
10/2/2013	NA	UFW	Larse Farms
10/2/2013	NA	UFW	Live Oak Farms
10/2/2013	NA	UFW	Lucich Farms
10/2/2013	NA	UFW	Mac Berry Farms
10/2/2013	NA	UFW	Ocean Mist Farms
10/2/2013	NA	UFW	Ortega Farms
10/2/2013	NA	UFW	Pappas & Co
10/2/2013	NA	UFW	Premier Raspberries dba Dutra
10/2/2013	NA	UFW	RAMCO
10/2/2013	NA	UFW	Red Rooster Co
10/2/2013	NA	UFW	Reiter Berry
10/2/2013	NA	UFW	Reiter Brothers
10/2/2013	NA	UFW	Rocha Brothers Farms
10/2/2013	NA	UFW	Sabor Farms



<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
10/2/2013	NA	UFW	Scurich Berry Farms, Inc.
10/2/2013	NA	UFW	Stamoules Produce Company
10/2/2013	NA	UFW	Sundale Vineyards
10/2/2013	NA	UFW	Sunwest Fruit Company
10/2/2013	NA	UFW	T.T. Miyasaka
10/2/2013	NA	UFW	Tanimura & Antle (T&A)
10/2/2013	NA	UFW	Taylor Farms
10/2/2013	NA	UFW	The Nunes Company, Inc.
10/2/2013	NA	UFW	Valley Pride
10/2/2013	NA	UFW	Vignolo Farms
10/2/2013	NA	UFW	Wawona Packing Company
10/3/2013	NA	UFW	Boskovich Farms
10/3/2013	NA	UFW	Marz Farms
10/4/2013	NA	UFW	Braga Ranch
10/4/2013	NA	UFW	Catalinos Berry Farms
10/4/2013	NA	UFW	Church Brothers
10/4/2013	NA	UFW	Dimare Fresh Newman
10/4/2013	NA	UFW	Festival Farms
10/4/2013	NA	UFW	Royal Oaks Farms
10/4/2013	NA	UFW	San Miguel Produce
10/4/2013	NA	UFW	Springfield Farms
10/4/2013	NA	UFW	Westside Strawberry Farms, Inc.

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
10/25/2013	NA	UFW	T & R Berry Farms
5/29/2014	NA	United Food and Commercial Workers Union, Local 5	Norcal Nursery, Inc./Sakuma Bros. Farms
5/29/2014	NA	United Food and Commercial Workers Union, Local 5	Norcal Nursery, Inc./Sakuma Bros. Farms
8/1/2013	NO	UFW	Martines Fruits & Vegetables, Inc.
8/16/2013	NO	Silvia Lopez	Gerawan Farming, Inc.
8/29/2013	RC	International Brotherhood Of Teamsters Local	C T & T Enterprises, Inc.
9/18/2013	RD	Silvia Lopez	Gerawan Farming, Inc.
10/1/2013	RD	Jose Aguilar	Dole Berry North
10/25/2013	RD	Silvia Lopez	Gerawan Farming, Inc.
5/23/2014	RD	Horacio Torres	Arnaudo Brothers

During fiscal year 2013-2014, the ALRB conducted three (3) elections and issued two (2) certifications.

<b>Election Date</b>	<b>Employer</b>	<b>Labor Organization</b>
9/05/13	CT & T Enterprises	Teamsters Local 948
10/25/13	Dole Berry North	UFW
11/25/13	Gerawan Farming, Inc.	UFW

<b>Certification Date</b>	<b>Type of Certification</b>	<b>Employer</b>	<b>Labor Organization</b>
9/13/13	RC	CT & T Enterprises	Teamsters Local 948
5/27/14	RC	Dole Berry North	UFW

During fiscal year 2013-2014, the ALRB did not hold any election or unit clarification hearings.

## **Decisions Issued by the Board**

The Board issued nineteen (19) decisions in fiscal year 2013-2014. 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. (2013) 39 ALRB No. 10***

#### **Background**

On November 9, 2012, the United Farm Workers of America (UFW) filed a declaration requesting Mandatory Mediation and Conciliation (MMC) with George Amaral Ranches, Inc. (Employer). The Board issued an order on November 20, 2012 directing the parties to MMC. On July 8, 2013, the UFW filed a Petition for Review of the mediator's report pursuant to Labor Code section 1164.3, subdivision (a) (3) and Section 20408, subdivision (a) of the Board's regulations on the grounds that the mediator's failure to make wage increases for the current year under the imposed contract retroactive to January 1, 2013, more than a month before the MMC process began, was arbitrary and capricious because the mediator's report was untimely. The Employer filed an opposition to the UFW's petition, the UFW filed a motion to strike the Employer's opposition, and the Employer filed an opposition to the UFW's Motion to Strike.

#### **Board Decision**

The Board dismissed the UFW's petition for failure to state a prima facie case. Labor Code section 1164.3, subdivision (a) (3), provides for review upon a showing of a prima facie case that a provision in the mediator's report is arbitrary or capricious in light of findings of fact. The UFW did not argue any findings of fact by the mediator as a basis for a prima facie case that the provision in the proposed contract making wage increases for the current year effective on July 1, 2013 was arbitrary or capricious. Instead, the UFW argued that the retroactivity of wage increases to January 1, 2013 should have been imposed as a remedy for an alleged procedural error, i.e., the mediator's untimely report.

The Board noted that it was unclear whether the parties agreed to extend the mediation beyond the additional thirty days' extension provided for by statute and that it was unclear when the mandatory mediation sessions ended. No party sought Board intervention to enforce the statutory deadline prior to the issuance of the mediator's report, and the Board declined to impose a remedy for an alleged procedural error the provenance of which was unclear.

The Board also noted that the MMC process permitted the UFW to propose that wage increases be retroactive to the January 1, 2013 date it sought as a remedy but the UFW had made no such proposal. The Board upheld a mediator's report making an entire contract retroactive in *San Joaquin Tomato Growers, Inc. (2012) 38 ALRB No. 7*, a case in which the UFW had proposed retroactivity during the mediation process.

The Board reminded the parties of the importance of complying with all statutory deadlines applicable to MMC to avoid any prejudice to the employees affected. The Board also granted the UFW's Motion to Strike the Employer's Opposition, as a response to a Petition for Review is not provided for under the applicable statutory and regulatory provisions, and none was requested by the Board.

### ***GERAWAN FARMING, INC. (2013) 39 ALRB No. 11***

#### **Background**

On July 10, 2013, Lupe Garcia ("Garcia"), an employee of Gerawan Farming, Inc. ("Gerawan"), filed a "petition for intervention" with the Agricultural Labor Relations Board (the "ALRB" or "Board") seeking to intervene as a party in Mandatory Mediation and Conciliation ("MMC") proceedings between Gerawan and the United Farm Workers of America (the "UFW"). Garcia argued that he should be permitted to intervene under Board Regulation 20130, which defines the term "party" under the Agricultural Labor Relations Act (the "ALRA" or "Act") as, inter alia, someone properly seeking or entitled as of right, to be admitted as a party, or, alternatively, that he should be permitted to intervene pursuant to Code of Civil Procedure section 387 ("CCP § 387"), which governs intervention in civil court cases. Additionally, Gerawan argued that Garcia had a First Amendment right to attend MMC proceedings as a member of the public.

#### **Board Decision**

The Board dismissed Garcia's petition for intervention. The statutes and regulations governing MMC provided no mechanism for third party intervention. The issue of whether an individual employee could intervene in MMC proceedings was one of first impression. While the Board found that it may look to authorities governing intervention in other contexts for guidance, because MMC is quasi-legislative rather than quasi-judicial in nature, it would follow those authorities only insofar as they were consistent with the purpose and structure of MMC.

The Board noted that in representation and unfair labor practice cases under the ALRA and National Labor Relations Act (the "NLRA"), the ALRB and National Labor Relations Board (the "NLRB") generally declined to permit intervention by individual employees. With respect to Board Regulation 20130, the Board found that Garcia did not meet the definition of a "party" under that regulation and, in any event, the regulation was definitional in nature and did not purport to set forth rules for intervention. The Board also found that, even if it were to apply the CCP § 387 standard, intervention would not be appropriate. Garcia did not have a special interest in the outcome of the MMC proceedings that differentiated him from any other bargaining unit member. Even if he did have "an interest" in the case, granting intervention is discretionary and Garcia's interest was represented by the UFW, which was certified as bargaining representative and owed a duty of fair representation to Garcia and his fellow employees. Intervention would also be inconsistent with the structure and functioning of MMC. The statutes and

regulations governing MMC consistently refer to “the parties” as the relevant actors in the process. If any employee could intervene in MMC, the process could become unworkable and it would be inconsistent with the union’s status as bargaining representative.

The Board rejected the constitutional claim argued by Gerawan because the issue had not been raised by Garcia and Gerawan lacked standing to raise the issue.

***BUD ANTLE, INC. (2013) 39 ALRB No. 12***

**ALJ Decision**

On May 22, 2013, the Administrative Law Judge (ALJ) issued a decision in the above-referenced case in which he found that Bud Antle, Inc. (Respondent) violated sections 1153(e) and 1153(a) of the Agricultural Labor Relations Act (ALRA) by failing to supply the Teamsters Union, Local 890 (Union) with information requested by the Union in order to process grievances. The ALJ noted that the case presented two primary issues: 1) The relevance of the information requests to the grievances filed; and 2) whether the information requested was privileged and confidential. The ALJ concluded that the issue of relevance had been resolved because Respondent’s counsel stipulated at the prehearing conference that the information sought was relevant. Respondent was given an opportunity at the hearing to show good cause why the stipulation concerning relevance should not control, but Respondent’s counsel failed to do so. The ALJ held that the mere claim of privilege did not support Respondent’s categorical refusal to supply the information. The Respondent contended that the information sought was in the possession and control of Dole Fresh Vegetables, Inc. (Dole), not Respondent, and was therefore unavailable. The ALJ found that Respondent could not escape responsibility for failing to provide information by merely asserting the information was in the hands of a third party. The ALJ found that the Respondent failed to offer the requisite sworn testimony that it did not have possession or control of the information and it had attempted to obtain it from the third party and had been rebuffed. The ALJ went on to find that the evidence established that Respondent and Dole functioned as a single integrated enterprise, such that the information available to one was available to the other.

**Board Decision**

The Board affirmed the ALJ’s decision except that the Board rejected the ALJ’s conclusion that Respondent and Dole functioned as a single integrated enterprise. The Board concluded that while the ALJ pointed to strong circumstantial evidence that tended to show that Dole’s relationship with Respondent was not at arms’ length, the matter of whether the entities were a single integrated employer was not fully litigated.

## ***GERAWAN FARMING, INC. (2013) 39 ALRB No. 13***

### **Background**

On July 10, 2013, Lupe Garcia (“Garcia”), an employee with Gerawan Farming, Inc. (“Gerawan”) filed a petition for intervention with the Agricultural Labor Relations Board (“ALRB” or “Board”) in this matter. Pursuant to Administrative Order 2013-26, Gerawan and the United Farm Workers of America (“UFW”) filed responses, and in its response, Gerawan attempted to raise on Garcia’s behalf the issue whether Garcia and other employees, as well as members of the public, had a First Amendment right of access to Mandatory Mediation and Conciliation (“MMC”) proceedings between Gerawan and the UFW. The Board declined to reach the issue because Gerawan lacked standing to assert the legal rights of Garcia and other members of the public. (*Gerawan Farming, Inc. (2013) 39 ALRB No. 11.*) On August 2, 2013, Garcia filed a petition for reconsideration asking the ALRB to decide, inter alia, whether the public, including Garcia and other Gerawan employees, has the right to attend “on the record” MMC proceedings under Article I, Section 3(b) of the California Constitution and the First Amendment of the United States Constitution.

### **Board Decision**

Although the Board’s regulations do not provide for motions for reconsideration of a Board interlocutory order in an MMC proceeding, the Board treated the petition for reconsideration as a motion for reconsideration subject to the same standard of review as motions for reconsideration in unfair labor practice and representation proceedings. The Board denied Garcia’s motion for reconsideration on the grounds that it did not meet the standard for hearing a motion for reconsideration as reiterated in *South Lakes Dairy Farms (2013) 39 ALRB No. 2*, to wit: The moving party must show extraordinary circumstances, i.e., an intervening change in the law or evidence previously unavailable or newly discovered. The Board noted that this was also not a case where a motion for reconsideration would have been Garcia’s only option for Board review of the case, as Garcia could have raised the issue in the Petition for Intervention.

The Board granted reconsideration sua sponte because the issue raised, if left unresolved, could potentially result in the deprivation of constitutionally protected rights. The Board held that there was no right of access under the First Amendment of the United States Constitution. Applying the “experience and logic” test from the U.S. Supreme Court’s decision in *Press-Enterprise Co. v. Superior Court of California* (1986) 478 U.S. 1, the Board held that MMC proceedings are more like labor contract negotiations and that there is no tradition of labor negotiations being open to the public, nor did public access play a significant positive role in the functioning of MMC or any type of labor contract negotiation. The Board held that there was no right of public access under Article I, Section 3 (b) of the California Constitution because Article I, Section 3(b) had little impact on the construction of the Bagley-Keene Open Meeting Act, which applies to meetings of state bodies. MMC proceedings are not meetings of state bodies.

## ***SAN JOAQUIN TOMATO GROWERS, INC. (2013) 39 ALRB No. 14***

### **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, 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 no money 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 Tomato 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 made modifications to the methodology, namely by eliminating a 5 percent increase for miscellaneous fringe benefits (vacation, etc.) and by adding five 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 were 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 were: Medical \$0.86; Pension \$0.09. With respect to paid holidays, the Board directed that where it could be verified that a worker worked 5 days in the two weeks preceding either the July 4 or Labor Day holiday, that worker would 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 GC's revised makewhole award was \$229,663.00 with interest in the amount of \$294,027.00. The GC included changes based on re-examination of three of the contracts which increased 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. 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. 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 Board found that *Kentucky River Medical Center* did not apply to the interest calculation in this case as it had been in compliance since 1994. 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 also ordered that the makewhole principal amount and interest amount be clearly listed as two separate figures for each employee.

### **Board's Order Remanding Second Revised Makewhole Specification**

On January 15, 2013, the General Counsel issued a second revised makewhole specification pursuant to the Board's December 12, 2012 Decision and Order. Upon reviewing the second revised makewhole specification, the Board was satisfied that the makewhole principal was calculated in accordance with the Board's approved methodology; however, the Board found that it could not issue a final Decision and Order because it appeared that the interest on the makewhole principal owed was calculated incorrectly. Therefore, the Board issued Administrative Order No. 2013-12 on February 27, 2013, remanding the matter again for calculation of interest pursuant to *E. W. Merritt Farms, supra*, 14 ALRB No. 5.

### **Decision on Third Revised Makewhole Specification**

The General Counsel issued a Third Revised Makewhole Specification on July 16, 2013. For the full makewhole period of July 12, 2013 through September 8, 1994, the total makewhole principal owed is \$231,875. The Board found that this amount was calculated in accordance with the makewhole methodology adopted by the Board in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 4 as revised by *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 12. Therefore, the Board ordered that Respondent, pay bargaining makewhole to the employees set forth in the Third Revised Makewhole Specification. The Board also ordered that interest will be awarded and collected as employees are located.

## ***SAN JOAQUIN TOMATO GROWERS, INC. (2013) 39 ALRB No. 15***

### **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**

After a conducting a compliance hearing, the Administrative Law Judge (ALJ) issued his recommended decision. The ALJ found the GC's contract averaging methodology as expressed in the makewhole specification to be unreasonable, 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 no money 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 Tomato 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 made modifications to the methodology, namely by eliminating a 5 percent increase for miscellaneous fringe benefits (vacation, etc.) and by adding five 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 were as follows: a 2.52% increase for 1993 and a compounded 2.25 percent increase for 1994. Adjusted medical and pension benefits as dollar per hour worked were: Medical \$0.86; Pension \$0.09. With respect to paid holidays, the Board directed that where it could be verified that a worker worked 5 days in the two weeks preceding either the July 4 or Labor Day holiday, that worker would 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 GC's revised makewhole award was \$229,663.00 with interest in the amount of \$294,027.00. The GC included changes based on re-examination of three of the contracts which increased 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. 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. 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 Board found that *Kentucky River Medical Center* did not apply to the interest calculation in this case as it had been in compliance since 1994. 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 also ordered that the makewhole principal amount and interest amount be clearly listed as two separate figures for each employee.

#### **Board's Order Remanding Second Revised Makewhole Specification**

On January 15, 2013, the General Counsel issued a second revised makewhole specification pursuant to the Board's December 12, 2012 Decision and Order. Upon reviewing the second revised makewhole specification, the Board was satisfied that the makewhole principal was calculated in accordance with the Board's approved methodology; however, the Board found that it could not issue a final Decision and Order because it appeared that the interest on the makewhole principal owed was calculated incorrectly. Therefore, the Board issued Administrative Order No. 2013-12 on February 27, 2013, remanding the matter again for calculation of interest pursuant to *E. W. Merritt Farms, supra*, 14 ALRB No. 5.

#### **Decision on Third Revised Makewhole Specification (39 ALRB No. 14)**

The General Counsel issued a Third Revised Makewhole Specification on July 16, 2013. For the full makewhole period of July 12, 2013 through September 8, 1994, the total makewhole principal owed was \$231,875. The Board found that this amount was calculated in accordance with the makewhole methodology adopted by the Board in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 4 as revised by *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 12. Therefore, the Board ordered that Respondent pay bargaining makewhole to the employees set forth in the Third Revised Makewhole Specification. The Board also ordered that interest will be awarded and collected as employees are located.

### **Respondent's Request for Reconsideration**

On September 26, 2013, Respondent filed a motion for reconsideration of the Board's September 13, 2013 Decision and Order on the third revised makewhole specification. (*San Joaquin Tomato Growers, Inc.* (2013) 39 ALRB No. 14). Respondent pointed out in its motion for reconsideration that there was a typographical error on page nine of the Decision and Order, namely that the Order refers to a makewhole period July 12, 1994 to September 8, 1994, instead of July 12, 1993 to September 8, 1994. Respondent also took issue with the following sentence on page 8 of with the following sentence on page eight of the Board's Decision:

When a worker is awarded his or her makewhole amount, Respondent will be responsible for determining proper tax withholding and deductions and for submitting proper tax payments and reports to tax authorities as well as for providing tax reports to that individual to use in filing his/her income tax returns."

Respondent argued that if it paid the entire makewhole principal to the ALRB, and employees were located during the two year period that followed, it would be a "physical impossibility" for Respondent to withhold State and Federal withholdings and deductions for those employees because the ALRB would already have the money.

### **Board's Final Decision and Order (39 ALRB No. 15)**

On October 4, 2013, the Board granted Respondent's motion for reconsideration in order to further consider the issue of tax withholdings and deductions.

The Board issued an erratum correcting the typographical error on page nine, noting that the correct date range for the makewhole period is: July 12, 1993 to September 8, 1994.

The Board also clarified its Decision and Order in *San Joaquin Tomato Growers, Inc.* (2013) 39 ALRB No. 14 to order that the Respondent is to withhold the proper amounts from the makewhole principal before remitting the net amount to the ALRB.

The Board noted that the instant Decision and Order incorporates *San Joaquin Tomato Growers, Inc.* (2013) 39 ALRB No. 14, except as modified herein, and together these two documents represent the final Decision and Order of the Board in the above-captioned matter.

### **GERAWAN FARMING, INC. (2013) 39 ALRB No. 16**

#### **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. ("Gerawan"), pursuant to Labor Code section 1164. On April 16, 2013, the

Board issued *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5, finding that all statutory prerequisites had been met and referring the parties to the MMC process. The parties met with mediator Matthew Goldberg, but were unable to voluntarily agree to all terms of a collective bargaining agreement. Therefore, the mediator issued a report, dated September 28, 2013, fixing the terms of a collective bargaining agreement. On October 15, 2013, Gerawan filed a petition for Review of the Mediator's Report. Gerawan contested the propriety of numerous provisions, including wage rates, in the collective bargaining agreement fixed by the mediator. Gerawan also reiterated claims that statutory prerequisites for referral to MMC were not met, along with claims questioning the legality of the MMC process, that were rejected by the Board in earlier related decisions. (*Gerawan Farming, Inc.* (2013) 39 ALRB No. 5; *Gerawan Farming, Inc.* (2013) 39 ALRB No. 13.)

### **Board Decision**

The Board granted review on six provisions in the mediator's report and remanded the matter to the mediator to resolve the problems identified by the Board. In all other respects the Board affirmed the mediator's report because Gerawan failed to show that the mediator's findings of material fact were clearly erroneous, or that the provisions fixed in his report were arbitrary or capricious in light of his findings of fact. In two instances the provisions were referred back to the mediator to clarify his intent because the language of the provisions did not appear to match his accompanying analysis. The Board determined that it could not approve a provision prohibiting disparagement of the union because it would restrict the employer's statutory free speech rights. Similarly, the Board found that it could not approve a clause purporting to make the contract binding on a successor employer because existing law binds a successor only when the contract is assumed or adopted. Lastly, the Board referred to the mediator for resolution two provisions on which he failed to resolve the parties' differences. The UFW had filed a letter seeking to expedite a final Board decision by withdrawing its proposals on those two items, but the Board found it unnecessary to determine the propriety of that filing in light of the fact that the matter already was being remanded to mediator to resolve other issues. The Board incorporated by reference its earlier decisions that addressed Gerawan's other claims.

### ***GERAWAN FARMING, INC. (2013) 39 ALRB No. 17***

#### **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. ("Gerawan"), pursuant to Labor Code section 1164, subdivision (a)(1). On April 16, 2013, the Board issued *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5, finding that all statutory prerequisites had been met and referring the parties to the MMC process. The parties were unable to voluntarily agree to all terms of a collective bargaining agreement. Accordingly, pursuant to the authority of Labor Code section 1164,

subdivision (d), the mediator issued a report, dated September 28, 2013, fixing the terms of a collective bargaining agreement. On October 15, 2013, Gerawan filed a Petition and Brief in Support for Request for Review of the Mediator's Report. In its petition, Gerawan contested the propriety of numerous provisions in the collective bargaining agreement fixed by the mediator. Gerawan also reiterated various arguments that the Board previously addressed and rejected in *Gerawan Farming, Inc.* (2013) 39 ALRB No. 5 and in *Gerawan Farming, Inc.* (2013) 39 ALRB No. 13. In *Gerawan Farming, Inc.* (2013) 39 ALRB No. 16, the Board granted review as to six provisions of the mediator's report and remanded the matter to the mediator, in accordance with Labor Code section 1164.3, subdivision (c), to meet with the parties as necessary to address those provisions and issue a second report. In all other respects, the Board found that Gerawan failed to show that the mediator's findings of material fact were clearly erroneous, or that the provisions fixed in his report were arbitrary or capricious in light of his findings of fact. The parties subsequently met among themselves and with the mediator and were able to agree on all six of the provisions remanded by the Board. The mediator issued his second report, dated November 6, 2013, incorporating the agreed upon provisions.

### **Board Decision**

No party filed a request for review of the mediator's second report. Therefore, pursuant to Labor Code section 1164.3, subdivision (d), the Board ordered that the mediator's second report take immediate effect as a final order of the Board. The Board incorporated by reference its earlier decisions that addressed various claims made by Gerawan. Those orders, together with this Order, constitute the final order of the Board subject to review pursuant to Labor Code section 1164.5.

### **DOLE BERRY NORTH (2013) 39 ALRB No. 18**

#### **Background**

On October 18, 2013, José Aguilar filed a petition to decertify the United Farm Workers of America (UFW) as the certified bargaining representative of all Dole Berry North (Employer) agricultural employees in Watsonville, Salinas and Marina. The bargaining unit description was later amended by the Regional Director to include all of Employer's agricultural employees in Monterey and Santa Cruz counties. The UFW filed two unfair labor practice charges against Employer on October 18 and 22, 2013, and Employer filed an unfair labor practice charge against the UFW on October 23, 2013. The election was held on October 25, 2013 and the ballots were impounded because of the ULP charges.

The UFW timely filed six election objections alleging 1) unlawful employer assistance and support; 2) unlawful employer assistance through disparate treatment; 3) a defective eligibility list; 4) unlawful promise of benefits; 5) misrepresentation; and 6) forged signatures on the election petition.

### **Board Decision**

The Board held Objections 1 and 2 in abeyance pending a resolution of the UFW's unfair labor practice charges pursuant to *Mann Packing* (1989) 15 ALRB No. 11 and *Gallo Vineyards* (2008) 34 ALRB No. 6 because the wrong asserted and facts alleged in those objections are the same as in the unfair labor practice charges filed by the UFW. The Board held Objection 3 in abeyance pursuant to *Gallo Vineyards* (2009) 35 ALRB No. 6 because it is not possible to determine whether the number of defective addresses were outcome determinative without a tally of ballots.

The Board dismissed Objections 4, 5 and 6 for failure to state a prima facie case. Objection 4 was dismissed because the UFW failed to provide evidence in its declarations that the person making the unlawful promise of benefits, a former Dole employee and former UFW organizer who stated that the Employer would continue medical insurance for the employees even without a union, was or was thought to have been acting on behalf of the Employer in accordance with *Vista Verde Farms v. Agricultural Labor Relations Board* (1981) 29 Cal.3d 307, 322 and *Superior Farming Company, Inc. v. Agricultural Labor Relations Board* (1984) 151 Cal.App.3d 100, 118. Objection 5 was dismissed because the UFW did not provide a declaration stating when it became aware of the alleged misrepresentation and, in any event, one of its bargaining team members was present during the alleged misrepresentation far enough in advance to the election to provide a reasonable opportunity to respond. Objection 6 was dismissed because the declarants who stated they never signed the election petition did not state that their signatures had been forged on or even appeared on the election petition.

### ***PEREZ PACKING, INC. (2013) 39 ALRB No. 19***

#### **Background**

On September 30, 2013, Administrative Law Judge (ALJ) James Wolpman issued a decision in which he found that Perez Packing, Inc. (hereafter "Employer") violated section 1153, subdivisions (a) and (e) of the Agricultural Labor Relations Act (ALRA) by failing to provide to the certified collective bargaining representative, United Farm Workers of America (UFW), information necessary and relevant to collective bargaining. Specifically, the ALJ found that the Employer failed to provide an accurate employee list with current addresses, employees' classifications, and employee-foremen crew breakdowns. The ALJ also found that the Employer failed to comply with its statutory duty to maintain current addresses and classifications, as required by ALRA section 1157.3 and its implementing regulation, California Code of Regulations, title 8, section 20310, subdivision (a)(2). On October 24, 2013, the Employer timely filed exceptions to the ALJ's decision, denying that it violated its duty to provide information necessary and relevant to collective bargaining.



### **Board Decision**

The duty to bargain in good faith requires an employer to make a reasonable and diligent effort to comply with a union's request for relevant information. That the information is in the possession of a labor contractor is no defense. The standard for defining what is relevant is a liberal one, requiring only that the information "be directly related to the union's function as a bargaining representative and that it appear reasonably necessary for the performance of that function."

Applying the above principles, the Board affirmed the ALJ's conclusion that the information requested was relevant and necessary for bargaining and the failure to provide the information therefore violated the Employer's duty to bargain. In this case, the labor contractor engaged by the Employer possessed the requested information at all times material and the record showed that the Employer failed to make a diligent effort to obtain the information. While some of the information was provided on the first day of hearing, nearly one year after the initial request for information, unreasonable delay in providing relevant information also constitutes a violation of the duty to bargain. The Board did find that the ALJ erred in finding an independent violation of section 1157.3 of the ALRA, which requires that employers maintain current payroll lists containing the names and addresses of their employees and make them available to the Board upon request. The Board observed that section 1157.3 is not directly at issue; instead, the proper focus is on the duty to bargain. However, because section 1157.3 requires employers to maintain specified information as required for Board purposes, that duty negates any defense based on a failure to possess or obtain the information.

### **GERAWAN FARMING, INC. (2013) 39 ALRB No. 20**

#### **Background**

On October 25, 2013, Sylvia Lopez (Petitioner) filed a petition to decertify the United Farm Workers of America (UFW) as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. (Employer). An election was held on November 5, 2013, and the ballots were impounded. The UFW, Employer and the Petitioner all filed election objections. All parties alleged that misconduct occurred that affected the results of the election.

#### **Board Decision**

The Board set the following objection for hearing: UFW Objection 1, which alleges that the Employer unlawfully initiated, assisted in and supported the gathering of signatures for the decertification petition and decertification campaign.

The Board determined that the following objections alleged conduct mirrored in pending Unfair Labor Practice (ULP) charges and ordered that they be held in abeyance pending the General Counsel's resolution of those charges: UFW Objections 2, 4, 5, 21, 22, 23, and 30.

The Board found that some objections are of the nature that a ballot count is required in order to conduct a complete evaluation of whether the alleged misconduct affected the outcome of the election. Therefore, the Board ordered that the following objections be held in abeyance pending a tally of ballots, should a ballot count otherwise be necessary.: UFW Objections 9, 10, 11, 12, 17, 18, 19, and 32; and Petitioner's Objection 11.

The Board dismissed the following objections for failure to state a prima facie case. UFW Objections 3, 6, 7, 8, 13, 14, 15, 16, 20, 24, 25, 26, 27, 28, 29, and 31; Petitioner's Objections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12 and 13; and Employer's Objections 1-7.

### ***H & R GUNLUND RANCHES, INC (2013) 39 ALRB No. 21***

#### **Background**

On July 1, 2013, Administrative Law Judge Mark R. Soble ("ALJ") issued a decision in which he found that H & R Gunlund Ranches, Inc. ("Employer") violated section 1153, subdivision (a) of the Agricultural Labor Relations Act ("ALRA") by discharging, laying off, and failing to rehire employees who engaged in activity protected by the ALRA, namely, protesting a reduction in the piece rate and later filing charges with the Agricultural Labor Relations Board ("ALRB"). The discharge occurred on November 23, 2009, after members of the pruning and tying crew sought to have the previous year's piece reinstated after the Employer announced a reduction in the rate. The layoff occurred on December 3, 2009, just one day after the Employer rehired the crew after they filed charges with the ALRB. The failure to rehire occurred in January 2010. The ALJ found an additional unlawful failure to rehire four members of the crew for off-season hourly work that they had performed in previous years. On July 25, 2013, the Employer filed exceptions to the ALJ's decision, arguing that no violations were proven and that the complaint should be dismissed in its entirety. On August 22, 2013, the General Counsel of the ALRB filed a reply to the Employer's exceptions.

#### **Board Decision**

The Board affirmed the ALJ's decision that the Employer violated the ALRA by discharging employees on November 23, 2009, laying them off on December 3, 2009, and failing to rehire most of the employees in January 2010, all because they engaged in protected activity. The Board analyzed the record and the findings of the ALJ in light of the established standards for proving unlawful discharges, layoffs, or failures to rehire and found that with regard to these allegations all necessary elements had been proven. However, the Board reversed the ALJ's finding that four members of the crew were unlawfully denied recall for off-season hourly work. In failure to rehire cases, it must be established that the employees applied for the work and were rejected, or that under an established practice they should have been notified and offered the work but were not. The Board's review of the record revealed nothing regarding the normative selection

process for this work or whether the four individuals asked for that work and were available to do it.

***PEREZ PACKING, INC. (2014) 40 ALRB No. 1***

**Background**

Petitioner, United Farm Workers of America (“UFW”), has been the certified collective bargaining representative for the agricultural employees of Perez Packing, Inc. (“Employer”) since December 5, 1989. On January 21, 2014, the UFW requested that the Board direct the UFW and the Employer to engage in mandatory mediation and conciliation (“MMC”) pursuant to sections 1164(a)(1) and 11641.11 of the Agricultural Labor Relations Act (“ALRA” or “Act”), with the goal of reaching a collective bargaining agreement (“CBA”). In support of its MMC request, the UFW submitted declarations pursuant to sections 1164(a)(1) and 1164.11 of the Act, and its implementing regulation, California Code of Regulations, title 8, section 20400. One of the declarations stated that the Employer had committed an unfair labor practice (“ULP”) as found by the Board in its decision in 39 ALRB No. 19. On January 24, 2014, the Employer timely filed an answer to the UFW’s MMC request, denying there was a final decision that it had committed a ULP, as the decision in 39 ALRB No. 19 was under appellate review. The Employer further challenged the UFW’s declarations as being based on inadmissible hearsay, and also denied that the UFW ever made an initial demand to bargain as required by the aforementioned statutes and regulation.

**Board Decision**

Where a labor organization was certified for a particular bargaining unit before January 1, 2003, sections 1164(a)(1) and 1164.11 of the Act, as well as Board Regulation 20400, require that in order for MMC to be imposed, there must be a final determination that the involved employer has previously committed a ULP. For the purposes of directing parties to MMC under said provisions, such a determination may be made when the Board has issued a final decision and order finding the Employer liable for a ULP. This is true even if the ULP has not been reduced to a judgment, or is undergoing appellate review. This standard comports with the similar standard set forth in section 10(f) of the National Labor Relations Act (“NLRA”; 29 U.S.C. § 160(f)), which provides that a finding that a ULP has been committed is a final order, as it is reviewable – and whether such review is sought is irrelevant to the finality of the order.

The Board, pursuant to Board Regulation 20402(c)(3), ordered an expedited hearing to resolve the factual questions raised by the Employer with respect to the UFW’s alleged failure to make an initial demand to bargain, as well as the hearsay issues in the UFW’s declarations in its request for MMC.

***ARNAUDO BROTHERS, INC. (2014) 40 ALRB No. 2***

**Background**

On February 13, 2013, pursuant to a request by the United Farm Workers of America (the “UFW”), the Agricultural Labor Relations Board (the “ALRB” or “Board”) referred the UFW and Arnaudo Brothers, Inc. (the “Employer”) to Mandatory Mediation and Conciliation (“MMC”). On December 16, 2013, the parties met with their selected mediator (the “Mediator”) for their final mediation session. A transcript of the proceedings was prepared. On January 21, 2014, the UFW filed a copy of the transcript of the December 16, 2013 mediation session with the Board. Both the UFW and the Employer subsequently filed petitions for review with the Board pursuant to Labor Code section 1164.3 treating the transcript as the report that the Mediator is required to prepare and file pursuant to Labor Code section 1164(d) and Board regulation 20407(d).

**Board Decision**

The Board dismissed the petitions for review as premature on the ground that the transcript failed to meet the statutory and regulatory requirements for a mediator’s report. The transcript was not filed by the Mediator as required under Labor Code section 1164(d) and was not signed by the Mediator as required under Board regulation 20407(d). Additionally, the transcript failed to serve as a mediator’s report of the final terms of the collective bargaining agreement. The transcript referenced numerous sections and clauses to be included in the contract without providing the substance of those provisions. Finally, the Board noted that if the Board accepts review of any provisions of a report, the provisions that are not the subject of the petition for review go into effect as a final order of the Board. Accordingly, the Board held that any document submitted as a report should allow the parties and affected employees to determine the final terms of the agreement, a standard that the transcript did not meet. Because the Board had not received a proper mediator’s report, the Board concluded that the petitions for review were premature and the petitions were dismissed without prejudice.

***ARNAUDO BROTHERS, LP, and ARNAUDO BROTHERS, INC. (2014) 40 ALRB No. 3***

This matter is based on allegations that Arnaudo Brothers (Employer) violated sections 1153(a) and (e) of the Agricultural Labor Relations Act (ALRA) by refusing to furnish information to the United Farm Workers of America (UFW) and by refusing to bargain with the UFW.

**ALJ Decision**

On September 26, 2013, the Administrative Law Judge (ALJ) issued his recommended decision and order. The ALJ found Respondent violated sections 1153(a) and 1153(e) of the ALRA, rejecting Respondent’s various defenses. The ALJ held that Respondent, without justification, failed to timely respond to the information requests, and in some

cases, did not respond at all. The ALJ also found that Respondent, without justification, failed to meet with the UFW in negotiations.

### **Board Decision**

The Employer argued in its exceptions that during the hearing, the ALJ prevented Employer from pursuing lines of questioning that would have elicited evidence on the UFW's alleged disclaimer of interest and waiver of rights due to its 30 year absence. The Board rejected the Employer's abandonment defense, stating that it was well-established that the union's absence alone did not constitute a waiver of rights, rather "[o]nly two events aside from decertification in a Board election have been recognized as effective to terminate a certification: (1) a disclaimer by the certified union of its status as collective bargaining representative or (2) the certified union's 'defunctness,' i.e., its institutional death and inability to represent the employees." (*Pictsweet Mushroom Farms* (2003) 29 ALRB No. 3, p. 6.) The Board found that it had insufficient evidence to determine whether a disclaimer of interest had occurred because the record was not fully developed on that issue. Therefore, the Board remanded the matter to the ALJ to take evidence on the sole issue of whether a disclaimer of interest occurred.

### ***TRI-FANUCCHI FARMS (2014) 40 ALRB No. 4***

#### **Background**

On November 5, 2013, Administrative Law Judge Thomas Sobel (the "ALJ") issued a decision finding that the Respondent, Tri-Fanucchi Farms (the "Employer"), unlawfully refused to bargain with Charging Party United Farm Workers of America (the "UFW") and unlawfully refused to respond to a UFW information request. The Employer admitted that it refused to bargain with the UFW and refused to respond to its information request but contended that the UFW lost its certification by abandoning the bargaining unit between 1988 and 2012 and that its claims were also barred under the doctrines of unclean hands and laches. The Employer also contended that makewhole would be inappropriate because of its own good faith and dilatory conduct on the part of the UFW and the ALRB's General Counsel. The General Counsel filed a motion in limine to exclude evidence pertaining to the Employer's abandonment defense, which the ALJ treated as a demurrer or motion for judgment on the pleadings. The ALJ granted the General Counsel's motion, rejected the Employer's abandonment and equitable defenses, found that the unfair labor practice allegations had been proven, and ordered the Employer to pay bargaining makewhole. The Employer filed exceptions.

#### **Board Decision**

The Board upheld the ALJ's decision as modified. The Board held that the ALJ had the authority to consider a demurrer or motion for judgment on the pleadings. The Board further held that the Employer's abandonment defense fell squarely within a line of Board decisions rejecting that defense as a matter of law. The Board found that the Employer had waived its laches defense and, in any event, laches is not a defense to

unfair labor practice proceedings. Additionally, the Board held that, even if the defense were available, the Employer had failed to demonstrate the required element of prejudice. The Board also held that the defense of unclean hands is not available in unfair labor practice proceedings and that, even if it were available, the Employer failed to demonstrate prejudice. The Board held that the Employer failed to preserve its argument that the UFW disclaimed interest in representing the unit and, furthermore, it did not claim that the UFW made an unequivocal good faith statement of disclaimer. The Board agreed with the ALJ that the standard stated in *F&P Growers Assoc.* (1983) 9 ALRB No. 22 applied to the issue of whether makewhole should be awarded and that, under that standard, makewhole was appropriate. The Board modified the ALJ's recommended order concerning interest calculation pursuant to *H&R Gunlund Ranches, Inc.* (2013) 39 ALRB No. 21.

### **Concurring Opinion**

Chairman Gould filed a concurring opinion in which he expressed his concern for the problem of agency delay. He stated that, although the facts of this case did not show that there was a delay that would warrant denying the remedy ordered by the Board, he wished to emphasize that the need for prompt and expeditious agency action applies not only to the Board's General Counsel but also to the Board itself and that, under other facts, the Board risks giving up important remedies through delay. Chairman Gould expressed his intent to ensure that the Board acts with vigilance.

### ***PEREZ PACKING, INC.* (2014) 40 ALRB No. 5**

#### **Background**

Petitioner, United Farm Workers of America ("UFW"), has been the certified collective bargaining representative for the agricultural employees of Perez Packing, Inc. ("Employer") since December 5, 1989. On January 21, 2014, the UFW requested, in Case No. 2014-MMC-001, that the Board direct the UFW and the Employer ("the parties") to engage in mandatory mediation and conciliation ("MMC") pursuant to sections 1164(a)(1) and 11641.11 of the Agricultural Labor Relations Act ("ALRA" or "Act"), with the goal of reaching a collective bargaining agreement ("CBA"), which Employer opposed. The Board, in its decision and order in that matter (*Perez Packing, Inc.* (2014) 40 ALRB No. 1), set an expedited evidentiary hearing to resolve factual disputes as to whether the UFW had ever made an initial demand to bargain, a prerequisite for direction of MMC. The UFW withdrew Case No. 2014-MMC-001 on May 7, 2014. On May 13, 2014, the UFW filed another request with the Board to order that the parties engage in MMC. The Employer filed its answer opposing this request on May 16, 2014.

#### **Board Decision**

Where a labor organization was certified for a particular bargaining unit before January 1, 2003, and such organization requests that the Board direct it and the relevant employer to

engage in the MMC process, there are specific factual prerequisites that must be alleged in the declaration accompanying the organization's request. These prerequisites are described in sections 1164(a)(1) and 1164.11 of the Act, as well as Board Regulation 20400(a). In the instant case, the declaration accompanying the UFW's May 13, 2014 request was sufficient, and the Employer's arguments to the contrary were incorrect. The Board also ruled that some language at the end of its decision in 40 ALRB No. 1 (purportedly requiring that the UFW's initial demand to bargain had to have been made before January 1, 2003 in order to qualify for MMC) was erroneous and is to be disregarded.

***UNITED FARM WORKERS OF AMERICA (Corralitos Farms, LLC) (2014)***  
**40 ALRB No. 6**

**Background**

This case involves the commission of a technical unfair labor practice by a union in an attempt to seek indirect review of a decision by the Board in an underlying representation case pursuant to section 1158 of the Agricultural Labor Relations Act (ALRA). Section 1158 is the provision which is commonly utilized by employers to engage in technical refusals to bargain in order to seek court review of a Board decision certifying a union as the exclusive bargaining representative of the employers' agricultural employees. On March 19, 2014, the General Counsel and the United Farm Workers of America (UFW) jointly filed a "Motion For Board Decision Based On Stipulated Facts And Record." The stipulated facts include the admission by the UFW that, despite the Board's decision in *Corralitos Farms, LLC* (2013) 39 ALRB No. 8, the UFW demanded to be recognized as the exclusive representative of the agricultural employees of Corralitos Farms, LLC (Employer) and later threatened to picket until it received such recognition. In 39 ALRB No. 8, the Board dismissed the UFW's election objections as well as the General Counsel's complaint, both of which alleged election misconduct by the Employer. The Board therefore certified the results of the election, in which the "No Union" choice received a majority of ballots cast.

**Board Decision**

The Board found that the UFW violated section 1154, subdivision (h) of the ALRA. The Board declined to decide if section 1158 is applicable to attempts by a union to seek indirect review of a representation decision through the commission of a technical unfair labor practice because it is an issue of the availability of judicial review that must be decided by the appellate courts. Nor is it a question that can be decided by the Board in the first instance in order to preserve the issue for appeal. A Board decision merely sustaining the allegations in the complaint may allow the UFW to perfect an appeal arguing that section 1158 is applicable. The issue of judicial review is for the judiciary and not for the Board.

Following its long-established practice of refusing to relitigate in unfair labor practice proceedings matters previously resolved in representation proceedings, absent a showing of newly discovered or previously unavailable evidence, or other extraordinary circumstances, the Board found no basis to reconsider its decision in 39 ALRB No. 8. The issues raised by the UFW were considered and addressed by the Board in 39 ALRB No. 8. Disagreement with the Board's resolution of disputed issues does not constitute grounds for reconsidering an underlying representation decision. The Board rejected the UFW's argument that a different standard should apply to decisions where a union is not certified as the bargaining representative. The Board also rejected the argument that it must expressly address all disputed issues rather than adopting the findings and conclusions of the administrative law judge with which it fully agrees and which warrant no further analysis.

***ARNAUDO BROTHERS, LP, and ARNAUDO BROTHERS, INC. (2014) 40 ALRB No. 7***

**Background**

On May 13, 2014, mediator Matthew Goldberg (the "Mediator") issued his report concerning mandatory mediation and conciliation ("MMC") proceedings between Arnaudo Brothers, LP and Arnaudo Brothers, Inc. ("Arnaudo") and the United Farm Workers of America (the "UFW"). Both the UFW and Arnaudo filed petitions for review of the Mediator's report. The Agricultural Labor Relations Board (the "Board") granted review of the UFW's challenge to Article 2 and 24 of the MMC contract, dealing with union security, and contract duration. The UFW challenged the Mediator's decisions to delay the effective date of the union security language and to order a one-year contract.

**Board Decision**

The Board sustained the UFW's petition for review and remanded the matter to the Mediator. With respect to Article 2, the Board concluded that the Mediator's reliance upon the perceived presence or absence of employee support for the UFW ran up against the policies of the exclusive bargaining representative concept. Under the Agricultural Labor Relations Act ("ALRA"), a certified union retains its certification unless and until it is replaced or removed through an election. Unlike the rule under the National Labor Relations Act ("NLRA"), under the ALRA, loss of majority is irrelevant to the continuing validity of the union's certification. It would be improper for an alleged loss of employee support to be treated as a factor undermining a union's position in MMC. Employee support issues are generally to be resolved through the union certification or decertification process, not through MMC, and this, along with the potential for much litigation involving the employee support issue and re-litigation of union recognition issues argues for the conclusion that employee support is an impermissible factor to be relied upon by the mediator. The Board held that it is also relevant that Labor Code section 1164, subdivision (e) directly addresses matters such as consideration of comparable contracts and terms and conditions of employment in comparable firms or



industries. Because this is the approach contemplated by the Legislature, the mediator's reliance upon perceived doubts as to employee support was arbitrary and capricious.

The Board reached a similar conclusion with respect to Article 24, finding that the Mediator impermissibly based his ruling on contract duration upon his conclusions concerning employee support for the UFW and his belief that employees might desire an election. The Board also found that the Mediator's finding of fact that Arnaudo's employees had never expressed a desire to be represented by the UFW was clearly erroneous. The majority further found that, while a mediator is not required to treat past MMC decisions as binding precedent, Labor Code section 1164, subdivision (e) does require a mediator to consider comparable contracts when ruling on competing proposals and the Mediator provided no explanation of his treatment of the prior contracts presented to him except his belief that employees might not desire union representation, which was not a legitimate basis for his ruling. Chairman Gould wrote separately on this point to state his view that a requirement for the mediator to provide a reasoned distinction between prior and subsequent reports may impose a standard which unduly diminishes the flexibility desirable for a third party mediator and that the mediator should possess an ability to depart from prior reports so long as his or her conclusions are rooted in the relevant MMC criteria found in that statute. In Chairman Gould's view, in accordance with the general rules governing arbitrators' treatment of prior awards and contracts, what the mediator did in prior reports should matter little, or not at all, so long as the statutory criteria are met.

**Board Administrative Orders Fiscal Year 2013-2014**

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-26	Gerawan Farming, Inc.	2013-MMC-003 (39 ALRB No. 5)	7/12/2013	Order Setting Time For Response To Petition For Intervention
2013-27	Gurinder S. Sandhu dba Sandhu Brothers Poultry & Farming	2012-CE-010-VIS	7/25/2013	Order Granting General Counsel's Request For Leave To Respond To Respondent's Petition To Revoke Notice In Lieu Of Subpoena And Documents And Notice To Appear
2013-28	Arnaudo Brothers, LP.	2013-RD-001-VIS (39 ALRB No. 9)	7/25/2013	Order Denying Motion For Clarification Or, In The Alternative, Depublishing Of Portions Of Decision
2013-29	Arnaudo Brothers, Inc.	2013-MMC-001 (39 ALRB No. 7)	8/20/2013	Order Staying Mandatory Mediation And Conciliation
2013-30	Bud Antle, Inc.	2012-CE-007-SAL (39 ALRB No. 12)	8/22/2013	Order Denying General Counsel's Motion For Reconsideration
2013-31	Arnaudo Brothers, LP.	2013-RD-001-VIS (39 ALRB No. 9)	9/6/2013	Order Reconsidering Sua Sponte Order Denying Request To Respond To Requests For Review
2013-32	Gerawan Farming, Inc.	2013-NO-003-VIS	9/9/2013	Order Denying Petitioner's Request For Review Of Regional Director's Conclusion That Showing Of Interest Attached To Notice Of Intent To Organize Was Inadequate
2013-33	Arnaudo Brothers, Inc.	2013-MMC-001 (39 ALRB No. 7)	9/11/2013	Order Vacating Stay Of Mandatory Mediation And Conciliation Proceedings

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-34	Gerawan Farming, Inc.	2013-MMC-003	9/20/2013	Order Denying Employer's Motion For Stay Of Mandatory Mediation And Conciliation Proceedings
2013-35	Ace Tomato Company, Inc., et al.	93-CE-037-VI, et al. (20 ALRB No. 7)	9/24/2013	Order Conditionally Approving Formal Bilateral Settlement Agreement
2013-36	Gerawan Farming, Inc.	2013-RD-002-VIS	9/25/2013	Order Denying Petitioner's Request For Review
2013-37	Gerawan Farming, Inc.	2013-RD-002-VIS	9/26/2013	Order Denying Petitioner's Request For Review
2013-38	Gerawan Farming, Inc. and Silvia Lopez	2013-RD-002-VIS	10/4/2013	Order Denying Petitioner's Request For Expedited Review Of Regional Director's Dismissal Of Petition; Order Denying Employer's Request To File Response
2013-39	San Joaquin Tomato Growers, Inc.	93-CE-38-VI (20 ALRB No. 13) (38 ALRB No. 4) (38 ALRB No. 12) (39 ALRB No. 14)	10/4/2013	Order Granting Respondent's Motion For Reconsideration
2013-40	Ace Tomato Company, Inc., et al.	93-CE-037-VI, et al. (20 ALRB No. 7)	10/4/2013	Order Granting Extension Of Time To File Joint Motion For Reconsideration
2013-41	Gerawan Farming, Inc.	2013-MMC-003 (39 ALRB No. 5) (39 ALRB No. 13)	10/7/2013	Order Setting Time For Filing Of Petition For Review Of Mediator's Report
2013-42	Ace Tomato Company, Inc., et al.	93-CE-037-VI, et al. (20 ALRB No. 7)	10/8/2013	Order Denying Motion For Reconsideration
2013-43	Ace Tomato Company, Inc., et al.	93-CE-037-VI, et al. (20 ALRB No. 7)	10/18/2013	Order Denying Joint Motion For Reconsideration

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-44	Gerawan Farming, Inc.	2013-RD-003-VIS	10/29/2013	Order Vacating Regional Director's Dismissal Of Petition For Decertification
2013-45	Gerawan Farming, Inc.	2013-MMC-003 (39 ALRB No. 5) (39 ALRB No. 11) (39 ALRB No. 13) (39 ALRB No. 16)	10/30/2013	Order Denying Request For Order Directing Employer To Implement Contract
2013-46	Gerawan Farming, Inc.	2013-RD-003-VIS	11/1/2013	Order Vacating Regional Director's Dismissal Of Petition For Decertification
2013-47	Gerawan Farming, Inc.	2013-RD-003-VIS	11/4/2013	Order Denying United Farm Workers Of America's Motion To Vacate Decision Or, In The Alternative, Reconsider Decision
2013-48	Ace Tomato Company, Inc., et al.	93-CE-037-VI, et al. (20 ALRB No. 7)	11/4/2013	Order Granting Two Week Extension Of Time
2013-49	Gerawan Farming, Inc.	2013-RD-003-VIS	11/4/2013	Order Denying United Farm Workers Of America's Motion To Vacate Decision Or, In The Alternative, Reconsider Decision
2013-50	Gerawan Farming, Inc.	2013-RD-003-VIS	11/7/2013	Order Setting Schedule For Resolution Of Challenged Ballots
2013-51	Dole Berry North	2013-RD-001-SAL	11/8/2013	Order Setting Schedule For Resolution Of Challenged Ballots

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2013-52	Gerawan Farming, Inc.	2013-MMC-003	11/14/2013	Order Denying Gerawan Farming, Inc.'s Motion For Temporary Stay Of The Mandatory Mediation And Conciliation Proceeding Pending Resolution Of Objections And Challenges To The Decertification Election
2013-53	Ace Tomato Company, Inc., et al.	93-CE-37-VI, et al. (20 ALRB No. 7)	12/11/2013	Amended Notice Of Settlement Conference
2014-01	Perez Packing, Inc.	2014-MMC-001	3/25/2014	Order Setting Expedited Hearing
2014-01	Perez Packing, Inc.	2014-MMC-001	5/5/2014	Corrected Order Setting Expedited Hearing
2014-02	Gerawan Farming, Inc.	2013-CE-027-VIS	3/28/2014	Order Denying Request For Review Of ALJ's Ruling On Petition To Revoke Subpoena
2014-03	RBI Packing, LLC	2012-CE-002-VIS	4/3/2014	Order Granting The General Counsel's Request To Seek Court Order Requiring Compliance With Subpoena Duces Tecum
2014-03	RBI Packing, LLC	2013-CE-002-VIS	4/8/2014	Corrected Order Granting The General Counsel's Request To Seek Court Order Requiring Compliance With Subpoena Duces Tecum
2014-04	Gerawan Farming, Inc.	2013-RD-003-VIS (39 ALRB No. 20) 2013-CE-027-VIS	4/7/2014	Order Denying Application For Special Permission To Appeal An Order Of The Executive Secretary
2014-05	United Farm Workers (Corralitos Farms LLC)	2013-CL-008-SAL	4/8/2014	Order Setting Briefing Schedule

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-06	California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms	2012-CE-044-VIS 2013-CE-012-VIS	5/5/2014	Order Denying General Counsel's Application For Permission To Appeal Ruling Of The Administrative Law Judge
2014-07	Ace Tomato Company, Inc., et al.	93-CE-037-VI, et al. (20 ALRB No. 7)	5/13/2014	Order Denying Motion For Stay Of All Proceedings And Enforcement
2014-08	Dole Berry North	2013-RD-001-SAL (39 ALRB No. 18)	5/14/2014	Order Directing The Opening And Counting Of Ballots; Order Setting Investigative Hearing
2014-09	Dole Berry North	2013-RD-001-SAL (39 ALRB No. 18) (Admin. Order No. 2014-08)	5/16/2014	Order Granting Opportunity For Response From Petitioner To UFW's Request For Reconsideration
2014-10	Dole Berry North	2013-RD-001-SAL (39 ALRB No. 18)	5/21/2014	Order Denying UFW's Motion For Reconsideration And Directing The Opening And Counting Of Ballots; Order Setting Investigative Hearing
2014-11	Dole Berry North	2013-RD-001-SAL	5/27/2014	Order Certifying Tally of Election Ballots and Granting Withdrawal of Election Objections; Certification of Bargaining Representative
2014-12	Arnaudo Brothers, LP, and Arnaudo Brothers, Inc.	2013-MMC-001	6/3/2014	Order Accepting Petitioner's Petition for Review of Mediator's Report; Denying Employer's Petition for Review of Mediator's Report; Denying Motion to Stay MMC Proceedings
2014-13	D'Arrigo Bros. of California	2012-CE-005-VIS	6/3/2014	Order Denying Respondent's Application for Permission to Appeal Ruling of Administrative Law Judge

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-14	Arnaudo Bros.	2014-RD-001-VIS	6/5/2014	Order Denying Petitioner's Request For Review; Affirming RD's Decision To Block Election; & Dismissing Decertification Petition
2014-15	Arnaudo Bros.	2014-RD-001-VIS	6/10/2014	Order Denying Employer's Request for Review of Regional Director's Decision to Block Election and Dismiss Decertification Petition
2014-16	D'Arrigo Bros. of California	2012-CE-005-VIS	6/12/2014	Order Concerning Compliance with Notices in Lieu of Subpoenas
2014-17	Arnaudo Bros.	2014-RD-001-VIS	6/19/2014	Order Denying Employer's Request for Reconsideration of the Board's Order Denying Review of Regional Director's Decision to Block Election and Dismiss Decertification Petition
2014-18	San Joaquin Tomato Growers, Inc.	2011-MMC-001	6/23/2014	Order Providing Employer Opportunity to Submit a Response to Petitioner's May 20, 2014 Letter to the Board Regarding its April 14, 2014 Position Statement

## **Board Litigation**

For fiscal year 2013-2014, the Board litigation in state and federal courts increased with new filings. The table below lists and describes appeals of Board Decisions and lawsuits filed by filing date and judicial forum.

<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
08/24/12	<i>Ace Tomato Company, Inc.</i> , Fifth District Court of Appeal No. F065589, 38 ALRB No. 6 (2013)	Petitioner Employer seeks review and stay of Board's decision affirming the mediator's report fixing the terms of a collective bargaining agreement between the employer and the union.
11/08/12	<i>San Joaquin Tomato Growers, Inc.</i> , Fifth District Court of Appeal, No. F066074, 38 ALRB No. 9	Action challenging Board decision affirming MMC in 38 ALRB No. 9. (Note: Appeal denied 10/03/13.)
05/10/13	<i>D'Arrigo Bros. Co. of California</i> , Fourth District Court of Appeal, Division 1, Case No. D063886, 39 ALRB No. 4	Petition for review of Board decision finding employer interference in decertification election. (Note: Appeal denied 04/22/14.)
05/17/13	<i>Lupe Garcia v. California Agricultural Labor Rel. Bd., et al.</i> , Fresno County Superior Court Case No. 13-CECG-01557, 39 ALRB No. 5 (2013-MMC-003)	Petition for Writ of Mandate challenging the Board's order in 2013-MMC-003 (39 ALRB No. 5).
06/21/13	<i>Premiere Raspberries, LLC</i> , Sixth District Court of Appeal Case No. H039793, 39 ALRB No. 6	Petition for writ of review of Board's decision finding employer fired employee in reprisal. (Note: Appeal denied 04/13/14.)
10/28/13	<i>Gerawan Farming, Inc. v. ALRB, et al.</i> , Fresno County Superior Court Case No 13-CECG-03374	Writ of mandate (First Amendment challenge to MMC; public participation issue).
11/20/13	<i>Francisco Napoles v. ALRB</i> , Third District Court of Appeal, Case No. C075213; Superior Court Case No. 39-2013-00300664-CUWMSTK	Arnaudo employee (Napoles) challenges UFW's certification and challenges MMC on constitutional grounds and appeals from the superior court case, which dismissed the lawsuit for lack of jurisdiction. (Note: Appeal withdrawn 04/16/14.)



<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
11/22/13	<i>United Farm Workers (San Joaquin Tomato Growers) v. ALRB</i> , Third District Court of Appeal, Case No. C075210, 39 ALRB No. 15	Union's action to review Board decision in 39 ALRB No. 15 as to the extent of the makewhole remedy.
11/22/13	<i>San Joaquin Tomato Growers, Inc. v. ALRB</i> , Fifth District Court of Appeal, Case No. F068406, 39 ALRB No. 15 (2013)	Writ of Review of Board's decision and order in 39 ALRB No. 15.
12/16/13	<i>Gerawan Farming, Inc. v. ALRB</i> , Fifth District Court of Appeal, Case No. F068526, 39 ALRB No. 17 (2013)	Various constitutional challenges to Board's Decision in 39 ALRB No. 17, where the Board approved an MMC contract between the Employer and the Union.
01/15/14	<i>Gerawan Farming, Inc. v. ALRB</i> , Fifth District Court of Appeal, Case No. F068676, Fresno Superior Court Case No. 13CECG01408	Appeal from Fresno County Superior Court ruling denying petition for writ of mandate challenging the MMC process for lack of jurisdiction.
01/17/14	<i>Perez Packing, Inc.</i> , Fifth District Court of Appeal No. F068697, 39 ALRB No. 19 (2013)	Writ of Review of Board's decision and order in 39 ALRB No. 19.
02/04/14	<i>Napoles v. ALRB</i> (Arnaudo Brothers), California Supreme Court Case Number S216287	Petition for review of appellate court order denying stay of proceedings.
02/20/14	<i>Lopez v. Shiroma, et al.</i> , United States District Court, E.D. Cal., Case No. 1:14-CV-00236-LJO-GSA	42 USC § 1983 action for alleged civil rights violations arising out of representation election.
05/23/14	<i>Tri-Fanucchi Farms.</i> , Fifth District Court of Appeal No. F069419, 40 ALRB No. 4 (2014)	Writ of Review of Board's decision and order in 40 ALRB No. 4.
06/18/14	<i>United Farm Workers (Corralitos Farms, LLC)</i> , Sixth District Court of Appeal Case No. H041113, 40 ALRB No. 6	Petition for writ of review of Board's decision finding union unlawfully picketed for representative status.

## **Unfair Labor Practice Charges**

In fiscal year 2013-2014, one hundred and twenty-four (124) ULP charges were filed.

	<b>Salinas Regional Office</b>	<b>Visalia Regional Office</b>	<b>Total</b>
Charges Filed	55	69	124
Withdrawn	13	6	19
Dismissed	18	6	24
Settled	25	5	30
Charges to Complaint	4	15	19

## **Complaints**

During the fiscal year 2013-2014, the General Counsel issued sixteen (16) new complaints encompassing twenty-six (26) charges.

	<b>Salinas Regional Office</b>	<b>Visalia Regional Office</b>	<b>Total</b>
Complaints Issued	7	12	19
Withdrawn	0	1	1
Dismissed	0	0	0
Settled	1	1	2
Complaints to Compliance	2	0	2

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
1.	2014-CE-003-VIS	Gerawan Farming, Inc.	04/04/2013	The matter is pending the scheduling of a hearing.
2.	2013-CE-028-VIS	Arnaudo Brothers, LP	04/15/2013	The matter is pending the scheduling of a hearing.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
3.	2011-CE-004-SAL	Kawahara Nurseries, Inc.	07/19/2013	ALJ decision issued on 01/14/2014. The matter is before the Board on review of exceptions to ALJ decision.
4.	2013-CE-027-VIS	Gerawan Farming, Inc.	08/15/2013	This matter is pending the scheduling of hearing on consolidated election objections and ULP complaint.
5.	2013-CL-008-SAL	United Farm Workers (Corralitos Farms)	08/16/2013	The Board issued its decision on 06/05/2014 and the matter is on review before the 6 <sup>th</sup> DCA.
6.	2012-CE-033-VIS	Charanjit S. Batth	08/23/2013	The hearing was taken off calendar on 12/09/2013 as the parties reached an informal settlement agreement.
7.	2013-CE-033-SAL	George Amaral Ranches, Inc.	08/23/2013	The matter is before the Board on review of exceptions to ALJ decision.
8.	2013-CE-008-VIS	Tri-Fanucchi Farms	09/05/2013	The Board issued its decision on 04/23/2014 and the matter is on review before the 5 <sup>th</sup> DCA.
9.	2012-CE-041-VIS	Gerawan Farming, Inc.	10/30/2013	The complaint is pending the scheduling of a hearing date.
10.	2013-CE-022-SAL	Gill Ranch Co., LLC	10/30/2013	The hearing was taken off calendar on February 3, 2014 because the parties reached an informal settlement agreement.
11.	2012-CE-032-VIS	Fresh Origins, LLC.	11/12/2013	The parties reached an informal bilateral settlement agreement on the first day of the hearing on 02/24/14.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
12.	2011-CE-017-VIS	Sun World International, Inc.	12/24/2013	Complaint was withdrawn on 3/26/14 due to the unavailability of a key witness due to health concerns.
13.	2013-CE-016-VIS	P&M Vanderpoel Dairy	12/24/2013	The matter is pending before the Board on review of the General Counsel and Respondent's exceptions to the ALJ decision.
14.	2012-CE-044-VIS	California Artichoke and Vegetable Growers dba Ocean Mist Farms	12/31/2013	The matter is scheduled for hearing September 23 and 24, 2014.
15.	2013-CE-002-VIS	RBI Packing LLC	12/31/2013	The hearing was taken off calendar 06/06/2014 as the parties reached an informal bilateral settlement agreement.
16.	2013-CE-027-SAL	McGrath Family Farm	06/02/2014	The hearing on complaint is scheduled for September 23 and 24, 2014.

## **Mandatory Mediation and Conciliation**

During the fiscal year 2013-2014, the ALRB received two (2) requests for referral to mandatory mediation and conciliation.

	<b>Case No.</b>	<b>Certified Representative</b>	<b>Employer</b>	<b>Request for MMC filed</b>	<b>Status</b>
1.	2014-MMC-001	UFW	Perez Packing, Inc.	01/21/14	Board approved union's request to withdraw its MMC petition on 05/08/14
2.	2014-MMC-002	UFW	Perez Packing, Inc.	05/13/14	The parties were referred to MMC on 05/23/14 and are engaged in mediation

## **Unfair Labor Practice Hearings**

During the fiscal year 2013-2014, the ALRB held seven (7) hearings on the following unfair labor practice complaint cases. The ALRB did not hold any hearings in compliance cases.

	<b>Case No.</b>	<b>Respondent</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>	<b>No. of Hearing Days</b>
1.	2012-CE-030-VIS	Arnaudo Brothers	07/25/13	07/26/13	2
2.	2011-CE-004-SAL	Kawahara Nurseries, Inc.	09/30/13	10/03/13	4
3.	2013-CE-008-VIS	Tri-Fanucchi Farms, Inc.	10/21/13	10/21/13	1
4.	2012-CE-010-VIS	Gurinder S. Sandhu dba Sandhu Poultry and Farming	11/19/13	11/25/13	5
5.	2013-CE-033-SAL	George Amaral Ranches, Inc.	01/15/14	01/27/14	6
6.	2013-CE-016-VIS	P&M Vanderpoel Dairy	02/11/14	02/12/14	2
7.	2012-CE-032-VIS	Fresh Origins, LLC	02/24/14	02/24/14	1
	<b>Grand Total</b>				<b>21</b>

## **Accounting of Monies Disbursed**

### **Monies Received and Disbursed from the Agency Trust Fund from July 1, 2013 to June 30, 2014**

#### **DEPOSITS**

Sabor Farms	2012-CE-058-SAL, 2012-CE-067-SAL	3,138.35
Boskovich Farms	2013-CE-006-SAL	3,878.76
Betteravia Farms	2010-CE-043-VIS, 2011-CE-002,004,019-VIS	690.90
Charanjit S. Batth	2012-CE-033-VIS	15,000.00
Gill Ranch	2013-CE-022-SAL	5,563.41
Fresh Origins	2012-CE-032-VIS	61,465.29
Lakeside Organic Gardens	2013-CE-005-SAL	1,741.00
RBI Packing	2013-CE-002,015,040-VIS	116,000.00
Premiere Raspberries	2012-CE-070-SAL, 2012-CE-071-SAL	2,304.58
TOTAL 2013-14 FY		209,782.29

#### **DISBURSEMENTS**

Sabor Farms	2012-CE-058-SAL, 2012-CE-067-SAL	3,138.35
Boskovich Farms	2013-CE-006-SAL	3,878.76
Hess Collection Winery	2003-MMC-1-SAL	11,277.80
Betteravia Farms	2010-CE-043-VIS, 2011-CE-002,004,019-VIS	690.90
Charanjit S. Batth	2012-CE-033-VIS	15,000.00
Gill Ranch	2013-CE-022-SAL	5,563.41
Fresh Origins	2012-CE-032-VIS	61,465.29
Lakeside Organic Gardens	2013-CE-005-SAL	1,741.00
Premiere Raspberries	2012-CE-070-SAL, 2012-CE-071-SAL	2,304.58
TOTAL 2013-14 FY		105,060.09

## **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.

In fiscal year 2013-2014, no cases were referred to the Fund and there were no disbursements from the Fund. As of June 30, 2014, \$23,468.65 remains in the Fund for distribution.