

# **Agricultural Labor Relations Board**

## **Report to the Legislature and to the Governor**



### **Fiscal Year 2014-2015**

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

**William B. Gould IV, Chairman**  
**Genevieve A. Shiroma<sup>1</sup>**  
**Cathryn Rivera-Hernandez**  
**Isadore Hall III<sup>2</sup>**

**J. Antonio Barbosa, Executive Secretary**

**Sylvia Torres-Guillén, General Counsel<sup>3</sup>**  
**Mark Woo-Sam, Acting General Counsel<sup>4</sup>**  
**Julia L. Montgomery, General Counsel<sup>5</sup>**

**Date Submitted: February 15, 2017**

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<sup>1</sup> Genevieve A. Shiroma became Chairwoman on January 13, 2017.

<sup>2</sup> Isadore Hall III was appointed on January 13, 2017.

<sup>3</sup> Sylvia Torres-Guillén separated June 30, 2015.

<sup>4</sup> Mark Woo-Sam became Acting General Counsel on July 1, 2015, and separated on April 3, 2016.

<sup>5</sup> Julia L. Montgomery became General Counsel on April 4, 2016.

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## **I. Introduction**

More than forty years ago, the Legislature enacted the Agricultural Labor Relations Act (Act), a law granting certain rights to California farmworkers 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 farmworkers 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 is submitted pursuant to Labor Code section 1143. The report is current through June 30, 2015. Through its efforts in Fiscal Year 2014-2015, the Agricultural Labor Relations Board (ALRB) advanced the purposes of the Act. The Board issued 9 decisions and 38 administrative orders. As a result of legal challenges, the Board saw 13 new legal filings in state and federal courts, some involving its administration of the laws concerning mandatory mediation and conciliation. Investigation and prosecution of over 90 unfair labor practices resulted in the issuance of 19 complaints. Settlements were achieved in 13 cases. After findings of liability, \$211,890.71 was distributed in 12 cases to remedy unfair practices. No funds were required to be distributed from the Agricultural Employees Relief Fund. In election activity, the Board, through its regional offices, processed 14 notices to take access during the summer of 2015. The ALRB also engaged in outreach activities to make the safeguards of the Act known to workers and employers alike.

This report reflects the hard work, commitment, and accomplishments of the staff and members of the ALRB in implementing the Act, and I thank my colleagues and staff for their dedication. The ALRB remains firm in its commitment to enforce the Act.

I am committed to continue to work with the Executive and Legislative branches of Government to realize the Act’s purposes.

**WILLIAM B. GOULD IV**  
Chairman, Agricultural Labor Relations Board

## **II. Election Activity**

Farmworkers have the right to choose whether or not they want a union to represent them. Elections are held to allow farmworkers to select or terminate representation by a labor organization. The ALRB is the state agency charged with administering and conducting all aspects of farmworker representation elections.

One of the important protections under the Act is that farmworkers have the right to be contacted at their workplace so that they may receive information about a prospective or existing union. The employer is required to give the union organizers “access,” namely, to allow the organizers onto its property to meet directly with the farmworkers.

During fiscal year 2014-2015, labor organizations filed fourteen (14) notices of intent to take access. A notice of intent to take access is commonly abbreviated as an “NA”.

<b>Date Filed</b>	<b>Type of Filing</b>	<b>Labor Organization</b>	<b>Employer</b>
7/23/14	NA	UFCW, Local 5	Norcal Nursery Inc./Sakuma Bros. Farms (Turlock)
7/23/14	NA	UFCW, Local 5	Norcal Nursery, Inc./Sakuma Bros. Farms (Red Bluff)
6/24/15	NA	UFW	Larse Farms, Inc.
6/24/15	NA	UFW	Rocha Brothers Farms
6/25/15	NA	UFW	Live Oak Farms
6/25/15	NA	UFW	Rogina, Inc.
6/26/15	NA	UFW	Corralitos Farms
6/26/15	NA	UFW	Garrouette Farms
6/26/15	NA	UFW	Ortega Berry Farms
6/29/15	NA	UFW	Dutra Farms dba Premiere Raspberries, LLC
6/29/15	NA	UFW	Sweetwood Farms, Inc. dba Red Rooster Co.
6/30/15	NA	UFW	Dimare Fresh
6/30/15	NA	UFW	Family Ranch
6/30/15	NA	UFW	Mike Jensen Farms

When a labor organization files a notice of intent to organize, accompanied by confidential signature cards signed by at least ten percent of the farmworkers, it may obtain a list of presently employed farmworkers and their home addresses. During fiscal year 2014-2015,

labor organizations did not file any notices of intent to organize. A notice of intent to organize is commonly abbreviated as an “NO”.

From September 29, 2014, to March 12, 2015, the Board conducted a consolidated election objections/unfair labor practice hearing in Gerawan Farming, Inc., Case No. 2013-RD-003-VIS. This 105-day hearing, held before an administrative law judge (“ALJ”) involved 130 witnesses and over 20,000 pages of transcripts. Following post-hearing briefs, the ALJ issued his decision on September 17, 2015. All parties filed “exceptions” (objections) to the ALJ’s recommended decision. On April 15, 2016, the Board issued its decision. Review of that decision is now before California appellate courts.

### **III. Decisions Issued by the Board**

The Board hears a variety of different types of cases. The most common type of case is an unfair labor practice (“ULP”) case, which typically involves a violation of a farmworker’s right under the Act by an employer or union. A critical Board function is hearing all challenges and objections related to a representation election. The Board may also hear appeals of rulings issued by mediators in mandatory mediation and conciliation proceedings and petitions seeking to clarify the scope of union representation.

The Board issued nine (9) decisions in fiscal year 2014-2015. 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))).

#### ***P & M VANDERPOEL DAIRY (2014) 40 ALRB No. 8***

##### **Background**

This case arises from an unfair labor practice (ULP) charge filed on April 22, 2013, by Jose Noel Castellon Martinez alleging that Respondent, P&M Vanderpoel Dairy, violated the ALRA by firing him and four other workers on April 17, 2013, for engaging in protected concerted activity.

The workers at the dairy desired a raise and agreed that they would, as a group, approach Matthew Vanderpoel (Matthew), dairy manager, just after the day shift ended and just before the night shift began to request the raise. The workers decided that Lupe Hernandez (Lupe), who spoke English better than the rest of the group, would be the one to present their demand to Matthew. Lupe told Matthew that the workers wanted a \$1.00 per hour wage increase. Matthew testified that Lupe told him that if the workers’ demand for a wage increase was not met, they would quit. The four workers who testified at the hearing stated that they never told Lupe to say that they would quit.

After his discussion with the workers, Matthew called his father, dairy owner Mike Vanderpoel (Mike) who arrived at the dairy within about five minutes. The workers all testified that Mike was angry when he arrived, and that he began to yell at Noel Martinez.

Mike asked “do you want your job tomorrow, yes or no?” Noel testified that he was initially so intimidated he was speechless, but after a moment he asked Mike why he was being singled out. Mike asked again “do you want your job, yes or no?” and then said “you can leave, you don’t have a job here anymore.” Then in front of the assembled workers, Mike called 911 to have law enforcement remove the workers from the dairy property. All of the workers left before the police arrived.

### **Administrative Law Judge’s Decision**

The Administrative Law Judge (ALJ) found that Respondent violated section 1153(a) of the Act by discharging the workers for engaging in protected concerted activity.

The ALJ found that none of the workers told Lupe to tell Matthew that the workers would quit if they did not get the raise. On the other hand, the ALJ found that group’s spokesperson, Lupe, told Matthew in English that the workers would quit if they did not get the raise. The ALJ found that because the workers’ chosen spokesperson created the misunderstanding, the responsibility for the confusion rested with the workers. On the other hand, the ALJ found that Mike re-opened the question of whether the employees wanted to work by demanding that the workers either work or get out, and therefore, was obligated to take into account the possibility that the workers had changed their minds or that he had misperceived their true intent. The ALJ found that the workers did manifest an interest in keeping their jobs. The ALJ further reasoned that Mike’s hasty, angry preemptive conduct prevented the correction of the misunderstanding that the workers wanted to quit, and also led the workers to reasonably believe that they had been fired.

The ALJ rejected the Employer’s argument that the workers’ concerted activity was not protected because they stayed after work in a critical work area and essentially engaged in a “sit-down” strike. In support of his conclusion that the worker retained their protected status, the ALJ applied the factors set forth in *Quietflex Manufacturing Co.* (2005) 344 NLRB 1055, 1056-58, a case which analyzed which party’s rights should prevail in the context of an on-site worker protest. The ALJ then rejected the Employer’s argument that the failure of the workers to apply for unemployment insurance was evidence that they had quit and were not fired. In doing so, the ALJ stated that “the failure to seek unemployment benefits, especially in agriculture, where a large percentage of the workforce is undocumented, is an insufficient basis to justify an inference that the workers had quit their employment.” Finally, the ALJ rejected the Employer’s argument that the General Counsel’s failure to take declarations from the worker witnesses prior to the hearing violated *Giumarra Vineyards Corp.* (1977) 3 ALRB No. 21.

### **Board Decision**

The Board affirmed the findings of fact and conclusions of law of the ALJ, and responded to the parties’ exceptions and responses as summarized below. Member Rivera-Hernandez issued a concurring opinion and Chairman Gould issued a concurring and dissenting opinion.

The Board denied the Respondent's request for oral argument because the Board found the parties' briefs were sufficient for the Board to analyze the issues in this case; however, the Board admonished the General Counsel for making unsubstantiated, inflammatory accusations about Respondent's counsel's alleged racial motivations in her reply to the Respondent's exceptions.

The Board rejected the Respondent's argument that adverse inferences should be drawn from the General Counsel's failure to call Lupe Hernandez as a witness, as nothing in the record indicated that Lupe Hernandez was not also available to be called as Respondent's witness. With respect to Respondent's argument that the ALJ improperly failed to allow testimony on the reason why the employees did not file for unemployment insurance, the Board agreed that a simple inquiry into whether or not the workers filed for unemployment insurance benefits is permissible, and generally, a respondent's counsel should be able to ask a witness on cross examination whether he did not apply for unemployment insurance because he quit. However, the Board agreed with the ALJ's ultimate disposition of this issue, because during the hearing the examination of the witness quickly crossed over into the territory of the workers' immigration status, and it was proper for the ALJ to stop this line of questioning.

The Board found that the facts did not support a finding that a sit-down strike or even a work stoppage occurred in this case, but rather the employees specifically chose to approach Matthew between shifts when no one was working. The Board disagreed that *Quietflex Manufacturing Co.*, *supra*, 344 NLRB 1055, relied on by the ALJ, applies to this case, because *Quietflex* involved an on-site work stoppage.

The Board declined to revisit Respondent's "trial by ambush" arguments, and affirmed the ALJ's holding that the rule in *Giumarra Vineyards, Inc.*, *supra*, 3 ALRB No. 21 and codified in Board regulation sections 20236 and 20274, requiring worker witness declarations to be turned over to counsel only after the worker testifies, applies only if worker declarations are taken in the first place.

With respect to the notice and mailing remedy, the Board rejected Respondent's argument that the one-year mailing requirement is punitive. The Board declined to give the Regional Directors the discretion to draft the Notice to Agricultural Employees in this case or future cases. As for the General Counsel's proposed revisions to the Notice, the Board declined to adopt the proposed language in this case; however, the Board noted that in the future, it may consider whether the Notice language merits revisions.

In reply to the Respondent's exceptions the General Counsel urged the Board to hold that "[i]n the context of a meeting outside work hours in which workers are asking for better working conditions, statements that workers will quit if they do not get a raise should be seen...as a negotiating tactic and attempt to convince the employer to concede to the

workers' demand." The majority opinion states that there is not a need to address the question of whether such activity is protected under the ALRA inasmuch as the ALJ ultimately rejected the argument that the employees had actually quit. Board Member Shiroma noted in a footnote that NLRB case law has held under analogous circumstances that where employees conditionally threaten to quit, the conduct is protected.

Board Member Hernandez-Rivera agreed with the result reached by the majority but wrote separately to express her view that Section 1152 of the ALRA protects employees who concertedly threaten to resign in support of legitimate demands concerning their terms and conditions of employment, and that the Board was required to so hold in this case. Member Rivera-Hernandez stated that the conclusion that the employees were terminated raised the distinct issue of whether the termination was unlawfully based upon the employees' protected activity. She stated that, unless the majority found that the employer was motivated solely by the wage demand, which it had not explicitly done, the Board needed to determine either that the threat to quit is protected, in which case no further inquiry into motivation would be necessary, or that it is not protected, in which case a "dual motivation" analysis would be required. Member Rivera-Hernandez stated that her analysis was consistent with the ALJ's opinion, which found the employees' entire course of conduct to be protected, and was also consistent with NLRB authority holding threats to quit under analogous circumstances to be protected. Member Rivera-Hernandez noted that the Board is required to follow the applicable precedents of the NLRA and that failing to reach the issue of the protected status of the threat to quit failed to extend the protections of NLRB precedent to the agricultural employees and provide certainty to the parties involved. Member Rivera-Hernandez stated that by reaching this issue she would not discard the ALJ's credibility determinations, which she would uphold in their entirety.

Board Chairman Gould wrote a separate opinion concurring with Member Shiroma's opinion except insofar as it (1) discussed the so called right to threaten to quit issue; (2) relied upon an "applicable precedent" analysis; and (3) discussed *Quietflex Manufacturing Co.*, *supra*, 344 NLRB 1055 as "applicable precedent." With respect to the General Counsel's argument that the workers' threat to quit as communicated through Lupe Hernandez was protected concerted activity, Chairman Gould dissented from the majority's reasoning on this issue because the ALJ did not address or resolve this issue in his opinion and unnecessarily involved the Board in making findings inconsistent with or at variance with the ALJ. Chairman Gould stressed that the ALJ found that the retaliation in question arose because of a concerted employee protest over working conditions without any reference to or reliance upon the threat to quit. Further, the ALJ opinion did not cite to any relevant cases on the threat to quit issue, and the ALJ Order does not mention employer adverse treatment because of or interference with a threat to quit as activity which is to be prohibited. Significantly, the ALJ made credibility determinations through which he concluded that Mike Vanderpoel's conduct made it impossible for the matter to be discussed. Chairman Gould observed that the ALJ did this through inferences, credibility determinations and his observation of the demeanor of the witnesses, and Chairman Gould

emphasized that where demeanor and credibility and inferences drawn from them are at the heart of the ALJ's decision as here, it is especially important for the Board to defer to the ALJ ruling and, in the process, conserve the Board's own taxed resources, and avoid making the Board's Order vulnerable at the stage of judicial review.

With respect to the majority's emphasis that section 1148 of the ALRA requires that the Board "follow the applicable precedents of the National Labor Relations Act," and because past NLRB case law has held that a conditional threat to quit is protected, and thus the Board was required rely on that case law, Chairman Gould opined that the majority opinion begs the question of how "applicable precedent" was to be defined. Chairman Gould stated that in any event, he was not compelled to propose an answer to the "applicable precedent" conundrum, given that the "applicable precedent" issue was not properly before the Board. Finally, Chairman Gould stated that he would want briefing from all of the parties before taking the step of relying on NLRB decisions from nearly 60 years ago which do not appear to have been relied upon in recent years by either the NLRB or the ALRB.

***ARNAUDO BROTHERS, LP and ARNAUDO BROTHERS, INC. (2014)***  
**40 ALRB No. 9**

**Background**

On September 9, 2014, mediator Matthew Goldberg (the "Mediator") issued a "Supplemental Report" in Mandatory Mediation and Conciliation ("MMC") proceedings between Arnaudo Brothers, LP/Arnaudo Brothers, Inc. ("Arnaudo") and the United Farm Workers of America (the "UFW"). In the Supplemental Report, the Mediator made certain rulings, including that the term of the MMC Contract, which had been set at one year in the Mediator's original report, would be extended to two years. With respect to the wage rates that would apply during the second year of the MMC Contract, the Mediator ordered that the matter would be "remanded to the parties for consideration of second-year wage rates." Both Arnaudo and the UFW petitioned for review of the Supplemental Report. The UFW argued that the remand on second-year wage rates was improper.

**Board Decision**

The Board remanded the matter to the Mediator for further proceedings. The Board noted that language in the MMC statutes, the Board's regulations, and the Board's June 27, 2014 order in this case (40 ALRB No. 7) required that the Mediator's second report state the basis for any determinations made and include citations to the relevant portions of the record. However, in the Supplemental Report the Mediator "remanded" the issue of second-year wage rates without stating any basis for the determination and without any reference to the record. Accordingly, the Board held that the Supplemental Report failed to meet the minimum standards for a mediator's report. The Board remanded the matter to the Mediator for further proceedings and the issuance of a second report pursuant to Labor Code, section 1164.3 subdivision (c). The petitions for review were dismissed without prejudice as premature.

***GEORGE AMARAL RANCHES, INC. (2014) 40 ALRB No. 10***

**Background**

Charging Party and Intervenor, United Farm Workers of America (“UFW”), has been the certified collective bargaining representative for the agricultural employees of George Amaral Ranches, Inc. (“Employer”) since July 24, 2012. On June 17, 2013, the UFW filed unfair labor practice (“ULP”) charges against the Employer in the above-referenced case, alleging that, on June 14, 2013, its owner (“the owner”) threatened and physically attacked (by dragging and pulling, striking, and throwing a rock) a UFW organizer in the presence of three employees, which resulted in minor injuries to the organizer (marks and scratches on his chest). It was further alleged that the owner then unlawfully terminated the three employees who witnessed the confrontation.

**ALJ Decision**

On May 22, 2014, the Administrative Law Judge (“ALJ”) issued a decision in this matter, in which he found that the organizer legally took access to the Employer’s area of operations on the day of the incident, as he was investigating the status of persons who, though performing work for Employer, were employees of a company called Green Pak. The ALJ also found that Green Pak was acting as a farm labor contractor for Employer. The ALJ concluded that both the proprietor of Green Pak and the owner had threatened to call law enforcement on the organizer, and that such threats, though not alleged in the complaint constituted ULPs, as they had been fully litigated at the hearing. The ALJ found that the Employer’s owner did not drag and pull the organizer, but further found that he struck the organizer in an attempt to take the organizer’s cell phone, and that this act did not constitute a ULP, as the owner believed that the organizer was using the phone to record their confrontation. The ALJ did not make any finding regarding the cause of the marks and scratches on the organizer’s chest, or the alleged throwing of a rock. The ALJ finally held that the three employees had reasonable cause to believe they had been fired, but were not entitled to backpay, as the owner made them a valid offer of reinstatement a few minutes after firing them, and their rejection of this offer was unreasonable.

The Employer filed exceptions to the ALJ’s decision, arguing that the Board should overturn all findings of violations. The General Counsel and the UFW filed exceptions arguing, inter alia, that the ALJ erred in not finding the striking of the organizer to be a ULP, and also in finding that the three employees unreasonably rejected Employer’s offer of reinstatement.

### **Board Decision**

The Board affirmed all the ALJ's credibility determinations. However, the Board rejected the ALJ's conclusion that the striking of the organizer did not constitute a ULP, and also rejected the ALJ's conclusion that the three terminated employees unreasonably rejected their valid offer of reinstatement. The Board concluded that, under settled case law, the striking of the organizer by the owner in the presence of the employees was a ULP. The Board further held that, having witnessed the confrontation between the organizer and the owner, the employees had a reasonable fear of the owner at the time the reinstatement offer was made, and that they were entitled to backpay. The Board affirmed all of the ALJ's other findings and determinations, as well as the ALJ's order.

### **Chairman's Concurrence**

Chairman Gould authored a concurrence in which he agreed that the organizer had legally taken access on the day of the incident, and that Employer's threat to call law enforcement on the organizer constituted a ULP. He also agreed that the three terminated employees reasonably rejected their offer of reinstatement. With respect to the organizer's taking access on the day of the incident, the Chairman agreed that Employer's interference with such access constituted a ULP, but provided a different rationale. The Chairman would not have overturned the ALJ's finding that the owner believed that the organizer was recording him, nor would he have overturned the ALJ's conclusion that, because of such belief, the striking of the organizer was not a ULP. Rather, the Chairman would have found a ULP based upon the owner being present in the vicinity while the organizer was taking access, as such presence violated the protected zone in which the organizer and the employees were engaged in protected communications pursuant to lawful access.

## ***KAWAHARA NURSERIES, INC. (2014) 40 ALRB No. 11***

### **Background**

On January 14, 2014, Administrative Law Judge Douglas Gallop (the "ALJ") issued a decision concerning unfair labor practice ("ULP") allegations that Kawahara Nurseries, Inc. (the "Employer") unlawfully laid off supporters of the United Farm Workers of America (the "UFW") and later refused to rehire said supporters (the "alleged discriminatees"). The ALJ found that all the allegations were closely related to allegations that were timely asserted in the initial charges and were therefore timely, with the exception of layoffs occurring more than six months prior to the filing of the initial charges. The ALJ found that the General Counsel failed to establish a prima facie case that the layoffs of the alleged discriminatees were unlawfully motivated. The ALJ also dismissed the rehire claims of alleged discriminatees who had failed to apply for rehire but found that those who did apply were unlawfully rejected. Finally, the ALJ found that two of the alleged discriminatees were unlawfully denied rehire because they had given testimony in an ALRB proceeding. Both the Employer and the General Counsel filed exceptions.

### **Board Decision**

The Agricultural Labor Relations Board (the “Board”) upheld the ALJ with respect to the timeliness of the claims, and the rehire claims but reversed the ALJ with respect to the layoffs. The Board found, contrary to the ALJ, that the General Counsel established a prima facie case that the layoffs were unlawful, relying on the work and disciplinary histories of the alleged discriminatees, the commission of contemporaneous ULPs and anti-union statements by the Employer, and the presentation of shifting and inconsistent justifications for the Employer’s actions. The Board further found that the Employer failed to establish that it would have made the same decisions in the absence of the alleged discriminatees’ protected conduct, rejecting the Employer’s contention that the fact that there were UFW supporters who were not laid off precluded a finding of unlawful motive. The Board found that denials by the Employer’s supervisors that they took union support into account in completing “expanded evaluations” that were used in the layoff selection process, which were credited by the ALJ, were insufficient to overcome the substantial evidence in the record warranting drawing an inference of unlawful motivation.

### ***GURINDER S. SANDHU dba SANDHU BROS. POULTRY & FARMING (2014)*** **40 ALRB No. 12**

#### **Background**

This case arose from an unfair labor practice (ULP) charge filed on May 25, 2012, by Elvia Hernandez (Hernandez) alleging that Respondent, Sandhu Bros. Poultry & Farming violated the Agricultural Labor Relations Act (ALRA) by firing her on May 12, 2012, for engaging in protected concerted activity.

#### **Administrative Law Judge (ALJ) Decision**

The ALJ found that Hernandez engaged in protected concerted activity when she and other workers protested a change in work assignments and complained about accompanying issues such as payment for wait time and the untimely distribution of paychecks. The ALJ concluded that when Hernandez became very vocal about these issues, Respondent’s supervisor, Kelly Sandhu, discharged her in retaliation for her protests. Although there was testimony at the hearing in this matter that Hernandez and several of her co-workers complained during the 2011 harvest season about sexual harassment by another supervisor, Rupy Sandhu, the ALJ ultimately did not reach any conclusion about whether the alleged sexual harassment had taken place because he found that the General Counsel failed to offer evidence that Hernandez’s 2011 sexual harassment complaints were a motivating factor in her 2012 discharge. With respect to the remedy for the unlawful discharge, the ALJ found that Respondent had made a valid offer of reinstatement to Hernandez, and that the General Counsel did not meet her burden of showing that there were special circumstances which made it objectively reasonable for Hernandez to reject the offer of reinstatement. Thus, the ALJ found that Respondent’s backpay liability terminated on the date Hernandez rejected the offer of reinstatement. In discussing the remedy, the ALJ noted that continued backpay after a refusal to accept an offer of reinstatement is often

referred to as “front pay” and that neither the ALRB nor the National Labor Relations Board (NLRB) has ever awarded front pay because it is “probably” not statutorily authorized. Finally, the ALJ rejected the sexual harassment training remedy sought by the General Counsel because this remedy was beyond the scope of the Board’s statutory mandate.

### **Board Decision and Order**

The Board affirmed in part and overturned in part the decision of the ALJ. The Board affirmed the ALJ’s conclusion that Kelly Sandhu fired Hernandez in retaliation for her protected concerted conduct on May 12, 2012. While the Board affirmed the conclusion that the record did not support a finding that Hernandez’s complaints about sexual harassment made in 2011 were a basis for the unfair labor practice violation in 2012, the Board explained that Hernandez’s sexual harassment complaints were protected concerted activity. Citing the recent decision by the NLRB, *Fresh and Easy Neighborhood Market, Inc.* (2014) 361 NLRB No. 12, the Board found there was ample evidence that in 2011, Hernandez was engaged in concerted activity for the purpose of mutual aid and protection, and the Board emphasized that its discussion set forth the correct standard for evaluating in the future whether complaints about sexual harassment are protected concerted activity under the ALRA.

The Board affirmed the ALJ’s conclusion that Respondent’s offer of reinstatement was sufficient and was conveyed to Hernandez; however, the Board found that Hernandez’s rejection of the offer of reinstatement was objectively reasonable under the circumstances, because the record supported the conclusion that there was a high likelihood that Hernandez, if reinstated, would have to work in close proximity to Rupy Sandhu without any reasonable assurance that she could trust Respondent to protect her from abuse. Therefore, the Board found that Respondent’s backpay liability did not terminate on the date Hernandez rejected the offer of reinstatement. The Board disagreed with the ALJ that continued backpay after Hernandez refused to accept the offer reinstatement (or “front pay”) is not an available remedy under the ALRA, and the Board held that, in addition to backpay extending from the date of Hernandez’s unlawful termination until the date of the Board’s order, under the circumstances of this case, an award of “front pay” continuing during the period between the Board’s order and the time that Respondent makes a valid offer of reinstatement which assures there are no continued onerous working conditions at Respondent’s operations was appropriate.

### ***SAN JOAQUIN TOMATO GROWERS, INC. (2015) 41 ALRB No. 1***

This case arose from allegations made by Petitioner, United Farm Workers of America (UFW), that San Joaquin Tomato Growers, Inc. (SJTG) had failed to comply with the terms of a collective bargaining agreement (CBA) reached via the Mandatory Mediation and Conciliation (MMC) procedures specified by the Agricultural Labor Relations Act (ALRA). The UFW initially requested that the Board order SJTG to cease and desist from

violating specified articles of the CBA in addition to ordering other relief. SJTG responded with a position statement that argued that the UFW had failed to provide evidence of the alleged violations of the CBA, and if such violations had occurred, the exclusive remedy would be the grievance-arbitration procedure contained in the CBA.

The Board invited the filing of amicus briefs on a number of questions related to the matter, including whether the Board should or may order enforcement of the CBA, and what, if any, state or federal jurisprudence argues for Board intervention. The Board asked the amici to comment on whether such enforcement (if appropriate) should take the form of an order directing the parties to arbitration, and if so, what, if any, principles of exhaustion applied. The Board also asked amici to comment on the interaction (if any) of ALRA sections 1164.3(f) and 1165.

After reviewing briefs of the amici and of SJTG (the UFW's brief was untimely filed, so the Board did not consider it), the Board found that the UFW had failed to exhaust its grievance-arbitration procedures under the CBA, and had failed to demonstrate that such procedures would be futile. Thus, the Board concluded that the UFW must seek arbitration before it could resort to any action before the Board or courts. The Board declined to take any action in the matter at this time.

***CALIFORNIA ARTICHOKE AND VEGETABLE GROWERS CORP. dba OCEAN MIST FARMS (2015) 41 ALRB No. 2***

**Background**

Charging Parties, Juan Martin Hernandez & Jaime Boyzo Araujo ("Hernandez" and "Boyzo Sr."), were agricultural employees of Valley Pride, Inc. ("VPI"), a farm labor contractor ("FLC") for California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms ("Employer"). On December 14, 2012, Hernandez filed unfair labor practice ("ULP") charges against the Employer in case no. 2012-CE-044-VIS ("2012 case"), alleging that, on December 13, 2012, Employer unlawfully disciplined Hernandez, Boyzo Sr., and several other employees for engaging in protected concerted activity (by walking off the job due to very cold, wet weather which made working conditions too dangerous to continue). On April 8, 2013, Boyzo Sr. filed case no. 2013-CE-012-VIS ("2013 case") charging ULPs against the Employer for refusing him time off for a family emergency in March 2013 (which caused him to quit), and failing to rehire him in April 2013 – all allegedly done in retaliation for Boyzo Sr.'s participation in the December 2012 walkout, and for Boyzo Sr.'s perceived assistance to Hernandez in the filing of, and investigation into, the 2012 case.

**ALJ Decision**

On December 1, 2014, the Administrative Law Judge ("ALJ") issued a decision in this matter, in which he found that the workers who participated in the December 2012 walkout were engaged in protected concerted activity, as the walkout was motivated by legitimate

health and safety concerns. The ALJ then found that the discipline taken against the workers after the walkout constituted a ULP in violation of section 1153(a) of the Agricultural Labor Relations Act (“Act”). The ALJ further found that the Employer violated section 1153(a) by refusing to grant Boyzo Sr. his requested time off, and by failing to rehire him, as such refusals were retaliatory. The ALJ rejected the claim of a section 1153(d) violation in the 2013 case, finding no evidence the Employer perceived that Boyzo Sr. was involved with the filing or prosecution of the 2012 case, or that such perception motivated any retaliation against him. The ALJ held that all the affected employees were owed makewhole for any and all economic losses suffered due to the ULPs. The ALJ rejected the Employer’s argument that the 2013 case was time-barred by the statute of limitations, as the allegations therein were closely related to original charges timely filed by Boyzo Sr., arose out of the same protected concerted activity, and were a continuation of the sequence of events in Boyzo Sr.’s employment, involving the same supervisors. The ALJ further rejected the Employer’s claim that the lack of declarations from the General Counsel’s witnesses at hearing constituted a denial of due process. The ALJ lastly rejected the Employer’s claim that VPI was a custom harvester, and that VPI, rather than the Employer, should bear liability for any ULPs, finding that VPI was an FLC.

The Employer filed exceptions to the ALJ’s decision, arguing that the Board should overturn all findings of violations. The General Counsel filed an exception arguing that the ALJ’s decision should be affirmed, but that the Board should find that the ALJ was wrong in refusing to rule on her motion, made on the first day of the hearing, alia, to strike the Employer’s affirmative defense to her proposed backpay specification, and to preclude inquiry into the immigration status of one of the affected employees. The ALJ refused to rule on this motion, bifurcated the hearing, and limited the hearing to the merits of the ULPs, leaving any ramifications about makewhole due to immigration status for the compliance phase of the matter.

### **Board Decision**

The Board affirmed all the ALJ’s findings and credibility determinations, and approved the decision to bifurcate the matter. The Board concluded that, given the evidence on record, and under recent case law, it would decline to rule on the General Counsel’s exception. The Board held that although the immigration status of the particular affected employee might well affect his makewhole, his immigration status, and its effect, if any, would have to be determined during the compliance phase of this matter. The Board affirmed all of the ALJ’s other findings and determinations, as well as the ALJ’s order.

## ***ARNAUDO BROTHERS, LP, and ARNAUDO BROTHERS, INC. (2015)***

### **41 ALRB No. 3**

#### **Background**

On February 13, 2013, the Agricultural Labor Relations Board (the “Board”) referred the United Farm Workers of America (the “UFW”) and Arnaudo Brothers, LP, and Arnaudo

Brothers, Inc. (“Arnaudo”) to Mandatory Mediation and Conciliation (“MMC”) Proceedings. Mediator Matthew Goldberg (the “Mediator”) issued a MMC report on May 13, 2014. The Board remanded for further proceedings concerning the “union security” and duration provisions of the MMC Contract. On September 12, 2014, the Mediator issued a “Supplemental Report” which contained rulings on the remanded provisions, but directed the parties to “meet and confer” regarding second-year wage rates. The Board found that the “Supplemental Report” did not meet the minimum requirements for a mediator’s report as it stated no basis and did not cite to the record concerning the direction that the parties meet and confer over wage rates. On April 6, 2015, the Mediator issued a “Second Supplemental Report” that adopted the UFW’s proposal for a 4 percent wage increase for the second year of the MMC Contract. Arnaudo petitioned for review.

### **Board Decision**

The Board dismissed Arnaudo’s petition for review of the Second Supplemental Report. The Board rejected Arnaudo’s argument that the referral to MMC was invalid based on alleged disclaimer or abandonment by the UFW, as those claims had previously been rejected by the Board. The Board found that Arnaudo did not establish a prima facie case that the Mediator made clearly erroneous factual findings, as Arnaudo had not identified any specific factual findings by the Mediator that it claimed were erroneous. Finally, the Board rejected Arnaudo’s argument that the Mediator’s wage rulings were arbitrary or capricious. The Mediator considered the evidence cited by Arnaudo and its arguments and found that they were not persuasive. In reaching his determinations, the Mediator relied upon Consumer Price Index and cost of living data consistent with Labor Code section 1164, subdivision (e)(5). The Mediator considered the evidence and arguments and provided a reasoned basis for his decision consistent with the factors enumerated in Labor Code section 1164, subdivision (e). Accordingly, the Board dismissed Arnaudo’s petition for review. The Board adopted the Mediator’s first report, as modified by the Second Supplemental Report and the Board’s decisions and orders in the case, as a final order of the Board to take immediate effect.

## ***ARNAUDO BROTHERS, LP, and ARNAUDO BROTHERS, INC. (2015)***

### **41 ALRB No. 4**

#### **Background**

This matter is based on allegations that Arnaudo Brothers, LP and Arnaudo Brothers, Inc. (Respondents) violated the Agricultural Labor Relations Act (ALRA) by threatening, or surveilling, or interrogating union supporters, Noe Martinez, Rigoberto Ochoa, Javier Rojas and Ivan Zuniga, and by laying them off. In addition, it was alleged that Respondents unlawfully called the sheriff to evict Zuniga from housing on Respondents’ property in retaliation for his having filed an unfair labor practice (ULP) charge with the Agricultural Labor Relations Board (ALRB). It was also alleged that Respondents unlawfully refused to rehire three union supporters, Martinez, Ochoa and Rojas.

### **ALJ Decision**

On December 30, 2014, the Administrative Law Judge (ALJ) issued his recommended decision and order. The ALJ found Respondents violated section 1153(a) of the ALRA. The ALJ found that Respondents violated the ALRA by creating the impression of surveillance of the workers' protected activities, by interrogating the workers about their union activities and support, by threatening the workers with loss of employment because of their union support, and by discriminatorily laying off Martinez, Ochoa, Rojas and Zuniga.

The ALJ dismissed the allegation that Respondents unlawfully sought to evict Zuniga from company housing because he found that the General Counsel did not prove that Respondents' action was motivated by Zuniga's filing of a ULP charge. The ALJ also dismissed the refusal to rehire allegations because he found that the General Counsel did not prove that Respondents were hiring at the time Martinez, Ochoa and Rojas sought rehire.

### **Board Decision and Order**

The Board found no basis for disturbing the ALJ's credibility determinations. The Board affirmed the ALJ's rulings, findings and conclusions in full, and adopted his proposed order.

The Board issues "administrative orders" in response to motions filed by parties regarding procedural issues in connection with ALRB investigations, hearings, elections, or mandatory mediation and conciliation proceedings. Many of the motions filed by parties are appeals of decisions rendered by either an ALJ or the ALRB's Executive Secretary. In fiscal year 2014-2015, the Board issued thirty-eight (38) administrative orders.

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-19	Gerawan Farming, Inc.	2013-CE-027-VIS	7/2/14	Corrected Order Granting the General Counsel's Request to Seek Court Order Requiring Compliance with Subpoena Duces Tecum
2014-20	San Joaquin Tomato Growers, Inc.	2011-MMC-001	7/24/14	Order Requesting Briefing From Parties and Amici on Questions Posed By The Board Regarding Alleged Violations Of The Collective Bargaining Agreement

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-21	Gerawan Farming, Inc.	2012-CE-041-VIS, et al.	7/31/14	Order Denying Motion to Schedule Cases for Hearing; Order Denying Decertification Petitioner Silvia Lopez's Request to be Heard
2014-22	Gerawan Farming, Inc.	2013-RD-003-VIS	7/31/14	Order to Expedite Scheduling of Consolidated Election Objection and Unfair Labor Practice Hearing
2014-23	San Joaquin Tomato Growers, Inc.	2011-MMC-001	8/29/14	Order Rejecting Petitioner's Untimely Response to Briefing Questions Posed by the Board
2014-24	Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc.	2013-CE-029-VIS, et al.	9/10/14	Order Setting Response Time
2014-25	Gerawan Farming, Inc.	2013-RD-003-VIS	9/16/14	Order Shortening Time to Respond to Respondent's Motion to Sever Amended Consolidated Complaint and to Enforce 39 ALRB No. 20
2014-26	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	9/17/14	Order to Report on Status of Investigation of Unfair Labor Practice Charges Relating To Election Objections
2014-27	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	9/19/14	Order to Sever Amended Consolidated Complaint and Expedite Hearing of Election Objections
2014-28	Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc.	2013-CE-029-VIS, et al.	9/22/14	Order Granting General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Subpoenas

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-29	Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc.	2013-CE-029-VIS, et al.	9/24/14	Order Denying Respondents' Request to Withdraw Order Granting General Counsel's Request for Leave to Seek Court Order Requiring Compliance with Subpoenas
2014-30	Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc.	2013-CE-030-VIS	10/15/14	Order Granting Application for Special Permission to Appeal ALJ Decision Denying Request for Consideration of Makewhole Remedy
2014-31	Perez Packing, Inc.	2014-MMC-002	10/21/14	Order Granting Request to Withdraw Request for Mandatory Mediation and Conciliation
2014-32	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	10/23/14	Order Denying General Counsel's Application for Special Permission to Appeal the Exclusion of Evidence Based on Disputed Issues
2014-33	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	10/24/14	Order Denying Respondent's Request for Special Permission to Appeal the Administrative Law Judge's Order re the General Counsel's Notice in Lieu of Subpoena
2014-34	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	10/27/14	Order Denying General Counsel's Request for Special Permission to Appeal Administrative Law Judge's Order Striking Expert Witness
2014-35	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	10/29/14	Order Denying General Counsel's Request for Hearing Date

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-36	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	10/29/14	Order Denying Respondent's Request for Special Permission to Appeal Order of the Administrative Law Judge Partially Denying Petition to Revoke Subpoena Duces Tecum
2014-37	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	10/31/14	Order Rejecting General Counsel's Request for Board Action in Four Pending Special Appeals
2014-38	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	11/5/14	Order Denying Respondent's Application for Special Permission to Appeal Regarding Introduction of Jorge Rueda's Testimony and Request for Clarification
2014-39	Ace Tomato Company, Inc., et al.	93-CE-37-VI, et al.	11/6/14	Order Denying General Counsel's Application for Permission to Appeal Administrative Law Judge's Order Granting Motion to Dismiss; Clarification of General Counsel's Role in Hearing and Settlement
2014-40	Kawahara Nurseries, Inc.	2011-CE-004-SAL	11/17/14	Order Denying General Counsel's Motion for Reconsideration
2014-41	Ace Tomato Company, Inc., et al.	93-CE-37-VI, et al.	11/18/14	Order Responding to 10/8/14 UFW Objection to Settlement Conference; General Counsel's 11/3/14 Request for Ruling on Said Objection; Ace Tomato's 11/5/14 and 11/7/14 Requests for Clarification; General Counsel's 11/10/14 Motion for Reconsideration; and Ace Tomato's 11/10/14 Motion to Strike

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2014-42	Ace Tomato Company, Inc., et al.	93-CE-37-VI, et al.	11/18/14	Order Denying General Counsel's Request for Hearing Date
2014-43	Ace Tomato Company, Inc., et al.	93-CE-37-VI, et al.	11/21/14	Order Responding to Regional Director's Notice of Representation
2014-44	Ace Tomato Company, Inc., et al.	93-CE-37-VI	12/12/14	Order Denying Regional Director's and UFW's Applications for Special Permission to Appeal Rulings of the Executive Secretary; Order Remitting Notice of Withdrawal of Fifth Makewhole Specification to the ALJ
2014-45	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	12/16/14	Order Denying Without Prejudice General Counsel's Request to Seek Court Order Requiring Compliance with Subpoena Duces Tecum
2014-46	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	12/17/14	Order Denying Without Prejudice General Counsel's Request to Seek Court Order Requiring Compliance with Notice in Lieu of Subpoena Duces Tecum
2014-47	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	12/23/14	Order Authorizing General Counsel to Seek Court Order Requiring Compliance with Notice in Lieu of Subpoena Duces Tecum

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2015-01	Ace Tomato Company, Inc., et al.	93-CE-37-VI	2/19/15	Order Denying Ace Tomato's Application for Special Permission to Appeal Administrative Law Judge's Order Denying Motion to Dismiss and Alternative Motion for Recusal of Board Members and Dr. Philip Martin
2015-02	Ace Tomato Company, Inc., et al.	93-CE-37-VI	2/27/15	Order Denying Regional Director's Application for Special Permission to Appeal Administrative Law Judge's Order Denying Motion to Strike Witness Testimony
2015-03	Gerawan Farming, Inc.	2013-RD-003-VIS, et al.	3/10/15	Order Denying General Counsel's Application for Special Permission to Appeal Denial of Her Petition to Revoke the Subpoena of Regional Director Silas Shawver
2015-04	Arnaudo Brothers, LP, and Arnaudo Brothers, Inc.	2013-MMC-001	3/24/15	Order Setting Time for Response to Motion for Board Intervention and Orders
2015-05	Arnaudo Brothers, LP, and Arnaudo Brothers, Inc.	2013-MMC-001	4/6/15	Order Setting Time for Submission of Mediator's Report
2015-06	Gerawan Farming, Inc.	2015-CE-011-VIS 2015-CE-012-VIS	5/14/15	Order Regarding General Counsel's Request to File a Petition for a Temporary Restraining Order in Fresno Court Superior Court

<b>Administrative Order Number</b>	<b>Case Name</b>	<b>Case Number</b>	<b>Issue Date</b>	<b>Description</b>
2015-07	D'Arrigo Bros. Co. of Cal.	2014-CE-005-SAL	5/28/15	Order Granting the General Counsel's Request to Seek Court Order Enforcing Subpoenas <i>Ad Testificandum</i> and Subpoena Duces Tecum
2015-08	Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming	2012-CE-010-VIS	6/8/15	Order to Show Cause Why the Board Should Not Authorize Enforcement Proceedings
2015-09	Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming	2012-CE-010-VIS	6/25/15	Order Denying Request for Authorization to Initiate Enforcement Proceedings

#### **IV. Board and General Counsel Litigation**

Board decisions are reviewable in the California courts of appeal, with review triggered by the timely filing of a petition for review. Litigation in California superior courts may include applications for injunctive relief or the enforcement of subpoenas issued in connection with an ALRB investigation or hearing. Cases in federal court may involve constitutional challenges to the Act or its enforcement.

##### **a. Board Litigation**

For fiscal year 2014-2015, the Board litigation in state and federal courts increased with 13 new filings. The table below lists and describes appeals of Board Decisions and lawsuits filed by filing date and judicial forum. Matters shown filed before July 1, 2014, continued as active cases during fiscal year 2014-2015.

<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, Case No. F065589 38 ALRB No. 6 (2012)	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.

<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
05/13/13	<i>Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al.</i> , Fresno County Superior Court, Case No. 13-CECG-01408 On Appeal: Fifth District Court of Appeal, Case No. F068676	Action challenges the Board's April 16, 2013 order for mandatory mediation and conciliation.
05/17/13	<i>Lupe García v. California Agricultural Labor Rel. Bd., et al.</i> , Fresno County Superior Court, Case No. 13-CECG-01557 39 ALRB No. 5 (2013)	Petition for Writ of Mandate challenging the Board's April 16, 2013 order in 2013-MMC-003 (39 ALRB No. 5) (constitutionality of MMC) (Gerawan employees challenge).
10/28/13	<i>Gerawan Farming, Inc. v. ALRB, et al.</i> On Appeal: Fifth District Court of Appeal, Case No. F069896 Fresno County Superior Court Case No 13-CECG-03374	Writ of Mandate (First Amendment challenge to MMC; public participation issue).
11/22/13	United Farm Workers (San Joaquin Tomato Growers) v. ALRB, Third District Court of Appeal, Case No. C075210 39 ALRB No. 15 (2013)	Union's action to review Board decision in 39 ALRB No. 15 as to the extent of the makewhole remedy. (Note: Appeal denied 7/10/14.)
11/22/13	<i>San Joaquin Tomato Growers, Inc. v. ALRB</i> , Fifth District Court of Appeal, 7 Case No. F068406 39 ALRB No. 15 (2013)	Writ of Review of Board's decision and order in 39 ALRB No. 15, concerning the makewhole remedy.
12/16/13	<i>Gerawan Farming, Inc. v. ALRB</i> , Fifth District Court of Appeal, Case No. F068526 39 ALRB No. 17 (2013)	Various statutory and 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. 13-CECG-01408	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. (Note: Voluntarily dismissed 4/20/15.)

<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
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, United States Court of Appeals, Ninth Circuit, Case No. 14-16640	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, Case 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 (2014)	Writ of Review of Board's decision finding union unlawfully picketed for representative status.
08/15/14	<i>Gerawan Farming, Inc. v. ALRB, et al.</i> , Fifth District Court of Appeal, Case No. F069896 Fresno County Superior Court, Case No 13-CECG-03374	Gerawan challenges the Board's August 21, 2013 order that MMC proceedings are closed to the public. Gerawan brings this direct appeal from the superior court order granting the Board's demurrer to Gerawan's complaint for declaratory and injunctive relief.
08/22/14	<i>Lopez v. Shiroma, et al.</i> , United States Court of Appeals, Ninth Circuit, Case No. 14-16640, United States District Court, E.D. Cal., Case No. 1:14-CV-00236-LJO-GSA	Board's appeal from district court ruling on ALRB's motion to dismiss that denied ALRB's immunity defenses in a 42 USC § 1983 action for alleged civil rights violations arising out of representation election.
09/15/14	<i>Francisco Aceron v. ALRB, et al.</i> , Sacramento County Superior Court, Case No. 34-2014-00168939	Francisco Aceron, a current ALRB employee with the Office of the General Counsel, filed a Complaint for Discrimination and Harassment arising out of his employment.
09/26/14	<i>P &amp; M Vanderpoel Dairy v. ALRB, et al.</i> , Fifth District Court of Appeal, Case No. F070149 40 ALRB No. 8 (2014)	Writ of Review of Board's decision finding employer wrongfully fired dairy workers for protected concerted activity (requesting pay raise).

<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
10/20/14	<i>Lupe Garcia v. California Agricultural Labor Rel. Bd., et al.</i> , Fifth District Court of Appeal, Case No. F070287, Fresno County Superior Court, Case No. 13-CECG-03374 39 ALRB No. 5 (2013)	Appeal of Denial of Petition for Writ of Mandate challenging the Board's April 16, 2013 order in 2013-MMC-003 (39 ALRB No. 5) (constitutionality of MMC) (Gerawan employees challenge).
11/26/14	<i>Kawahara Nurseries, Inc.</i> , Sixth District Court of Appeal, Case No. H041686 40 ALRB No. 11 (2014)	Writ of Review of Board's decision finding that employer unlawfully laid off employees based on their union activity and refused to rehire workers based on their union activity and for having given testimony in an ALRB proceeding.
05/07/15	<i>California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms.</i> , Fourth District Court of Appeal, Case No. E063489 41 ALRB No. 2 (2015)	Writ of Review of Board's decision finding that employer unlawfully terminated and discriminated against employees based on their union activity and refused to rehire workers based on their union activity.
05/26/15	<i>Gerawan Farming, Inc. v. ALRB</i> , Fresno County Superior Court, Case No 14-CECG-00987	Application for Temporary Restraining Order (TRO) in support of unfair labor practices alleging unlawful termination of an agricultural employee.
05/29/15	<i>Arnaudo Brothers, LP and Arnaudo Brothers, Inc. ("Arnaudo") v. ALRB, et al.</i> , Fifth District Court of Appeal, Case No. F071598 41 ALRB No. 3 (2015) (39 ALRB No. 7 (2013), et al.)	Writ of Review of Board's decision ordering mediator's findings after mandatory mediation and conciliation (MMC).
06/02/15	<i>Gerawan Farming, Inc. v. ALRB</i> [Public Records Act] Sacramento County Superior Court, Case No. 34-2015-80002100	Litigation demand (writ of mandamus, complaint for declaratory and injunctive relief) for documents communicated between the Board and the General Counsel on or about May 12, 2015, in the context of the General Counsel's seeking Board authority to request injunctive relief concerning unfair labor practices alleged against Gerawan Farming, Inc.

<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
06/22/15	<i>Gerawan Farming, Inc. v. ALRB</i> , California Supreme Court, Case No. S227243, Fifth District Court of Appeal, Case No. F068526 39 ALRB No. 17 (2013)	Various statutory and constitutional challenges to Board's Decision in 39 ALRB No. 17, where the Board approved an MMC contract between the Employer and the Union.
06/22/15	<i>San Joaquin Tomato Growers, Inc. v. ALRB</i> , California Supreme Court, Case No. S227250, Fifth District Court of Appeal, Case No. F068406, 39 ALRB No. 15 (2013)	Writ of Review of unpublished decision dated May 14, 2015, upholding Board's decision and order in 39 ALRB No. 15, concerning the makewhole remedy.
06/23/15	<i>Tri-Fanucchi Farms</i> , California Supreme Court, Case No. S227270, Fifth District Court of Appeal, Case No. F069419, 40 ALRB No. 4 (2014)	Writ of Review of published decision partially upholding Writ of Review of Board's decision and order in 40 ALRB No. 4.

**b. General Counsel Litigation**

For fiscal year 2014-2015, the table below lists and describes superior court and appeals courts actions being handled by General Counsel staff. The list includes pending appeals of injunctive relief petitions and enforcement actions, by filing date and judicial forum. Matters shown filed before July 1, 2014, continued as active cases during fiscal year 2014-2015.

<b>Filing Date</b>	<b>Case Name</b>	<b>Summary</b>
08/23/12	<i>Ace Tomato Co., Inc.</i> , Third District Court of Appeal, Case No. C072330 , San Joaquin County Superior Court, Case No. 39-2012-00285778-CU-PT-STK ALRB Case No. 2012-CE-024-VIS	Writ of Review of denial of Ex-Parte Application for a TRO and an OSC Regarding Preliminary Injunction to prevent employer from refusing to implement a collective bargaining agreement. Currently Stayed.
07/23/13	<i>Arnaudo Brothers, LP</i> , et al. Third District Court of Appeal, Case No. C075238 San Joaquin County Superior Court Case No. 39-2013-00299678-CU-PT-STK ALRB Case No. 2012-CE-028-VIS	Writ of Review of denial of Ex-Parte Application seeking a TRO and Preliminary Injunction to prevent employer from threatening and intimidating worker for participating in an ALRB process and engaging in protected union activity.
10/05/12	<i>Ace Tomato Co., Inc.</i> San Joaquin County Superior Court Case No. 39-2012-00287876-CU-PT-STK ALRB Case Nos. 93-CE-037-VI, 2012-CE-007-VIS, 2012-CE-024-VIS	Ex-Parte Application for Enforcement of Subpoenas. The matter is currently stayed.

## **V. Unfair Labor Practice Charges**

ULP charges, alleging violations of the Act, may be filed by agricultural employees or labor organizations against agricultural employers, or may be filed by agricultural employers against labor organizations. ULP charges are investigated by the General Counsel's office, and if determined to have merit, the General Counsel will file a ULP complaint, and the matter will be scheduled for a pre-hearing conference and then, a hearing before an ALRB administrative law judge. Alternatively, the ULP charge may be dismissed if the General Counsel concludes it lacks merit. Also, charges may be settled before or after a complaint has issued. Absent settlement, the complaint will proceed to a hearing during which witnesses testify and evidence is introduced, and following the hearing, the administrative law judge will issue a written decision, which will include, where it is found that the Act was violated, a remedial order.

In some instances, a separate "compliance hearing" is needed to establish the amount of the monetary award to compensate the charging party for the economic losses, such as lost wages, resulting from a violation of the Act. Typically, the processing of ULP charges takes place entirely within the administrative framework of the ALRB, but on some occasions the General Counsel may turn to the courts during this process, for example, when it is necessary to file a petition to enforce a subpoena, or when the Board has authorized the General Counsel to seek injunctive relief for an immediate court order remedying an egregious unfair labor practice.

### **a. ULP Charges**

In fiscal year 2014-2015, ninety-three (93) ULP charges were filed.

	<b>Salinas Regional Office</b>	<b>Visalia Regional Office</b>	<b>Total</b>
Charges Filed	50	43	93
Withdrawn	20	23	43
Dismissed	7	7	14
Settled	21	4	25
Charges to Complaint	9	2	11

### **b. ULP Investigation-Subpoena Enforcement**

During fiscal year 2014-2015, 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 subpoena in Superior Court. Most parties complied with the subpoenas before the General Counsel sought subpoena enforcement in Superior Court.

During the last fiscal year, the General Counsel sought to enforce a subpoena in Superior Court in connection with one unfair labor practice charge.

**c. ULP Complaints**

During fiscal year 2014-2015, the General Counsel issued nineteen (19) new complaints encompassing sixty-six (66) charges. The nineteen complaints include charges that were filed prior to and during fiscal year 2014-2015.

	<b>Salinas Regional Office</b>	<b>Visalia Regional Office</b>	<b>Total</b>
Complaints Issued	13	6	19
Withdrawn	1	0	1
Dismissed	0	0	0
Settled	4	1	5
Complaints to Compliance	2	2	4

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
1.	2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL	Harbor View Farms, LLC	08/30/2014	Settlement agreement was reached as of 04/27/2015.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
2.	2012-CE-041-VIS 2012-CE-042-VIS 2012-CE-046-VIS 2012-CE-047-VIS 2013-CE-007-VIS 2013-CE-009-VIS 2013-CE-025-VIS 2013-CE-027-VIS 2013-CE-030-VIS 2013-CE-038-VIS 2013-CE-039-VIS 2013-CE-041-VIS 2013-CE-042-VIS 2013-CE-043-VIS 2013-CE-044-VIS 2013-CE-045-VIS 2013-CE-055-VIS 2013-CE-058-VIS 2013-CE-060-VIS 2013-CE-062-VIS 2013-CE-063-VIS	Gerawan Farming, Inc.	09/09/2014	ALJ decision issued 09/17/2015. Board decision issued 04/15/2016. Pending court review.
3.	2014-CE-024-SAL 2014-CE-025-SAL	Rincon Pacific, LLC	11/20/2014	Settlement agreement reached as of 09/02/2015.
4.	2012-CE-056-SAL 2013-CE-001-SAL	Bud Antle, Inc. d/b/a Bud of California and Dole Fresh Vegetables Inc.	12/09/2014	Settlement agreement reached as of 03/02/2016.
5.	2014-CE-011-SAL	Ramos Farms	12/22/2014	Complaint withdrawn on 03/24/2015.
6.	2014-CE-042-SAL	Eclipse Berry Farms	02/11/2015	Settlement agreement reached as of 07/20/2015.
7.	2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL	Santa Paula Berry Farms	03/06/2015	Settlement agreement reached as of 06/06/2015.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
8.	2014-CE-021-SAL	T-Y Nursery, Inc.	03/12/2015	Settlement agreement reached as of 08/14/2015.
9.	2014-CE-030-VIS	KC AG, LLC	04/09/2015	Settlement agreement reached on 06/28/2015.
10.	2015-CE-013-SAL 2015-CE-014-SAL	George Amaral Ranches	05/07/2015	Settlement agreement reached on 11/05/2015.
11.	2013-CE-013-VIS	Frank Pinheiro Dairy & Milanesio Farms	05/27/2015	Settlement agreement reached on 10/19/2015.
12.	2013-CE-019-SAL 2013-CE-020-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2013-CE-025-SAL 2013-CE-029-SAL 2014-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL	George Amaral Ranches	05/27/2015	Settlement agreement reached on 11/10/2015.
13.	2013-CE-047-SAL	Sabor Farms	05/27/2015	ALJ decision issued 10/08/2015. Board decision issued 04/28/2016.
14.	2012-CE-010-VIS	Sandhu Brothers	06/01/2015	Settlement agreement reached on 12/22/2015.
15.	2012-CE-006-SAL 2013-CE-040-SAL	Associated Tagline, Inc.	06/01/2015	Settlement agreement reached on 02/10/2016.
16.	2013-CE-026-SAL 2013-CL-002-SAL	Monterey Mushrooms, Inc.	06/19/2015	Settlement agreement reached on 02/16/2016.
17.	2015-CE-003-SAL 2015-CE-004-SAL	Muranaka Farms Inc.	06/26/2015	Settlement agreement reached on 11/05/2015.
18.	2014-CE-007-VIS	Sun Pacific	06/30/2015	Settlement agreement reached on 11/10/2015.

	<b>Case No.</b>	<b>Respondent</b>	<b>Complaint Date</b>	<b>Status</b>
19.	2015-CE-011-VIS 2015-CE-012-VIS	Gerawan Farming, Inc.	06/30/2015	Hearing scheduled for 11/01/2016.

**d. Injunctive Relief**

During fiscal year 2014-2015, the General Counsel sought injunctive relief pursuant to Labor Code Section 1160.4 for one case.

	<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.	Gerawan	2015-CE-011-VIS	Fresno Superior	TRO Preliminary Injunction	Denied	6/10/2015

**e. ULP Settlements**

During fiscal year 2014-2015, the General Counsel achieved thirteen (13) settlement agreements which resolved twenty-five (25) unfair labor practices charges. Of these settlement agreements, eight (8) were achieved pre-complaint and five (5) were achieved post-complaint.

***Pre-Complaint Settlements***

During fiscal year 2014-2015, the General Counsel reached eight (8) pre-complaint settlements.

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
1.	2012-CE-005-VIS	D'Arrigo Bros.	Informal Bilateral	07/07/2014
2.	2014-CE-006-VIS	Westside Transplant	Informal Bilateral	10/08/2014
3.	2014-CE-018-SAL	Nava Enterprises	Informal Bilateral	01/27/2015

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
4.	2013-CL-003-SAL	UFW	Informal Bilateral	03/10/2015
5.	2013-CL-009-SAL	UFW	Informal Bilateral	03/10/2015
6.	2013-CL-010-SAL	UFW	Informal Bilateral	03/10/2015
7.	2015-CE-005-SAL	Scheid Vineyards, Inc.	Informal Bilateral	04/30/2015
8.	2015-CE-017-VIS	Joe Parreira Dairy	Informal Bilateral	06/09/2015

***Post-Complaint Settlements***

During fiscal year 2014-2015, the General Counsel reached five (5) post-complaint settlements.

	<b>Case No.</b>	<b>Respondent</b>	<b>Settlement Type</b>	<b>Settlement Date</b>
1.	2014-CE-004-SAL	D'Arrigo Bros.	Informal Bilateral	07/07/2014
2.	2013-CE-027-SAL 2013-CE-028-SAL	McGrath Family Farms	Informal Bilateral	09/16/2014
3.	2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL	Harbor View Farms, LLC	Informal Bilateral	04/27/2015
4.	2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL	Santa Paula Berry Farms	Informal Bilateral	06/06/2015
5.	2014-CE-030-VIS	KC Ag, LLC	Informal Bilateral	06/28/2015

**f. Unfair Labor Practice and Compliance Hearings**

During fiscal year 2014-2015, the ALRB held four (4) hearings in unfair labor practice complaint cases and one hearing on compliance (Ace Tomato, Inc.). Cases are listed by Hearing Closed date.

<b>No.</b>	<b>Case No.</b>	<b>Respondent</b>	<b>Hearing Opened</b>	<b>Hearing Closed</b>	<b>No. of Hearing Days</b>
1.	California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms	2012-CE-044-VIS	09/23/2014	09/24/2014	2
2.	Ace Tomato Company, Inc.	93-CE-37-VIS	01/20/2015	02/03/2015	9
3.	Arnaudo Brothers, LP	2012-CE-030-VIS	10/14/2014	03/10/2015	2
4.	Gerawan Farming, Inc.	2013-RD-003-VIS	09/29/2014	03/12/2015	105
5.	Arnaudo Brothers, LP	2012-CE-028-VIS	10/14/2014	10/15/2014	2
<b>Total</b>					<b>120 Days</b>

## **VI. Remedies and Disbursements**

The Board is empowered to order a wide range of remedies to effectuate the purposes of the Act and to “make whole” the victims of unfair labor practices. These remedies may include reinstatement of an employee found to have been unlawfully discharged, an award of lost wages and benefits, and various non-monetary remedies, including orders to cease and desist from engaging in similar conduct that violates the Act, and the issuance of notices to employees as discussed below.

Once a decision awarding backpay (the lost earnings resulting from an unlawful discharge) and/or other remedies is final, the ALRB will take the necessary actions to enforce that decision. Amounts received from parties who have been ordered to make backpay payments are transmitted by the ALRB to the farmworkers in the amounts awarded to them. Efforts are made to locate all farmworkers who are entitled to backpay. If the ALRB is unable to locate a farmworker entitled to backpay for a period of two years following the collection of the amount owed, this amount is deposited into the Agricultural Employee Relief Fund ("AERF"), and monies in that fund are used by the ALRB to pay farmworkers the unpaid balance of any monetary relief ordered by the Board in other matters that cannot be collected from the violator. Thus, on a year-to-year basis, there may be a disparity between the amounts collected and disbursed as monetary remedies.

### **Remedies**

In fiscal year 2014-2015, the Board released for compliance five (5) cases:

<b>Case No.</b>	<b>Respondent Name</b>	<b>Date to Compliance</b>	<b>Award Amount</b>
2011-CE-005-SAL	Kawahara Nursery	10/30/2014	N/A
2012-CE-010-VIS	Sandhu Brothers	01/06/2015	N/A
2011-CE-033-SAL	George Amaral	01/06/2015	1,191.30
2012-CE-003-VIS	Perez Packing Inc.	04/30/2015	N/A
2012-CE-028-VIS	Arnaudo Bros	06/05/2015	N/A

### **Monetary Remedies**

In fiscal year 2014-2015, the Board collected payments in two (2) cases for a total Award Amount of \$25,648.08.

Payments were received in two (2) cases as a result of a Board Order:

#	Case No.	Respondent Name	Board Order No.	Award Amount	Net Amount
1.	2012-CE-003-SAL	Premier Raspberries	39 ALRB No. 6	24,456.78	24,456.78
2.	2013-CE-003-SAL	George Amaral	40 ALRB No. 10	1,191.30	1,191.30

Payments were received in eleven (11) cases as a result of an Informal Settlement Agreement or Private Party Agreement.

#	Case No.	Respondent Name	Settlement Type	Award Amount	Net Amount
1.	2015-CE-005-SAL	Scheid Vineyards	Informal Bilateral	5,160.00	4,713.67
2.	2014-CE-018-SAL	Nava Enterprises	Informal Bilateral	6,010.00	5,292.99
3.	2013-CE-027-SAL 2013-CE-028-SAL	McGrath Farm	Informal Bilateral	19,495.12	16,210.02
4.	2013-CE-015-VIS	RBI Packing LLC	Informal Bilateral	116,000.00	116,000.00
5.	2013-CE-038-SAL	Fanciful Co.	Informal Bilateral	302.00	276.18
6.	2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL	Harbor Farms	Informal Bilateral	24,866.38	23,826.84
7.	2014-CE-011-SAL	Ramos Farms	Informal Bilateral	935.00	935.00
8.	2014-CE-017-VIS	Richter Brothers	Informal Bilateral	332.00	332.00
9.	2013-CE-059-SAL	Silent Springs	Informal Bilateral	16,819.00	15,380.87
10.	2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL	Santa Paula Berry	Informal Bilateral	20,223.06	20,223.06
11.	2014-CE-030-VIS	KC AG	Informal Bilateral	6,482.00	4,721.90

In fiscal year 2014-2015, the following amounts were paid to farmworkers as a result of findings of liability in unfair labor practice cases or as a result of settlement agreements:

#	Case No.	Respondent Name	Number of Checks Issued	Total Net Amount Issued
1.	2012-CE-003-SAL	Premiere Raspberries	1	24,456.78
2.	2013-CE-003-SAL	George Amaral	3	1,191.30
3.	2015-CE-005-SAL	Scheid Vineyards	2	5,160.00
4.	2014-CE-018-SAL	Nava Enterprises	7	6,010.00
5.	2013-CE-027-SAL 2013-CE-028-SAL	McGrath Farms	2	19,495.12
6.	2013-CE-015-VIS	RBI Packing LLC	52	113,939.90
7.	2013-CE-038-SAL	Fanciful Co.	2	302.00
8.	2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL	Harbor Farms	15	23,826.84
9.	2014-CE-011-SAL	Ramos Farms	1	935.00
10.	2014-CE-017-VIS	Richter Brothers	4	332.00
11.	2013-CE-059-SAL	Silent Springs	39	11,519.87
12.	2014-CE-030-VIS	KC Ag.	2	4,721.90
	<b>TOTAL</b>		128	<b>\$211,7890.71</b>

### Non-Monetary Remedies

In cases where a violation is found, 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 they can become aware of the outcome of the case.

A negotiated Informal Settlement signed by the parties can also include notice remedies in addition to monetary awards.

The following notice remedies occurred in fiscal year 2014-2015:

A notice reading was conducted in nine (9) cases involving 2,561 agricultural employees.

#	Case No.	Respondent Name	Date of Notice Reading	Number of Employees at Reading
1.	2013-CE-005-SAL	Lakeside Organic	07/24/2014	161
2.	2014-CE-004-SAL	D'Arrigo Bros.	08/28/2014 01/30/2015	1,353 428
3.	2014-CE-006-VIS	Westside Transplant	09/12/2014	7
4.	2013-CE-027-SAL 2013-CE-028-SAL	McGrath Farm	09/29/2014	25
5.	2014-CE-018-SAL	Nava Enterprises	02/24/2015	34
6.	2015-CE-005-SAL	Scheid Vineyards	03/05/2015	66
7.	2014-CE-011-SAL	Ramos Farms	04/20/2015	32
8.	2013-CL-003-SAL 2013-CL-010-SAL 2013-CL-009-SAL	UFW	06/09/2015	444
9.	2015-CE-017-VIS	Joe Parreira Dairy	06/30/2015	11

A notice mailing was conducted in seven (7) cases involving 11,928 agricultural employees.

#	Case No.	Respondent Name	Date of Notice Mailing	Number of Employees Receiving Mailing
1.	2013-CE-015-VIS	RBI	07/08/2014	52
2.	2013-CE-005-SAL	Lakeside Organic	07/31/2014	1,012
3.	2014-CE-004-SAL	D'Arrigo Bros.	08/15/2014 11/15/2014	3,052 6,785
4.	2014-CE-006-VIS	Westside Transplant	09/12/2014	135
5.	2015-CE-005-SAL	Scheid Vineyards	03/22/2015	54
6.	2014-CE-011-SAL	Ramos Farms	03/27/2015	129
7.	2013-CL-003-SAL 2013-CL-010-SAL 2013-CL-009-SAL	UFW	06/12/2015	709

A notice posting was completed in six (6) cases.

#	Case No.	Respondent Name	Date of Notice Posting
1.	2014-CE-004-SAL	D'Arrigo Bros.	08/27/2014 01/30/2015
2.	2013-CE-027-SAL 2013-CE-028-SAL	McGrath Farm	09/29/2014
3.	2014-CE-018-SAL	Nava Enterprises	02/24/2015
4.	2013-CL-003-SAL 2013-CL-010-SAL 2013-CL-009-SAL	UFW	04/02/2015
5.	2014-CE-011-SAL	Ramos Farms	04/20/2015
6.	2015-CE-017-VIS	Joe Parreira Dairy	06/30/2015

**a. Accounting of Monies Disbursed**

**Monies Received and Disbursed from the Agency Trust Fund  
from July 1, 2014 to June 30, 2015**

**DEPOSITS**

Elkhorn Packing	2013-CE-038-SAL	276.18
George Amaral Ranches	2013-CE-033-SAL (40 ALRB 10)	1,191.30
Harbor View Farms	2013-CE-035-SAL, et al.	23,826.84
McGrath Family Farm	2013-CE-027,028-SAL	16,210.02
Nava Enterprises	2014-CE-018-SAL	5,292.99
Premiere Raspberries dba Dutra Farms	2012-CE-003-SAL, et al. (39 ALRB 6)	21,925.59
Ramos Farms	2014-CE-011-SAL	935.00
Richter Brothers	2014-CE-017-VIS	332.00
Scheid Vineyards	2015-CE-005-SAL	4,713.67
Silent Springs	2013-CE-059-SAL	15,380.87
<b>TOTAL FY 2014-2015</b>		<b>\$90,084.46</b>

**DISBURSEMENTS**

Elkhorn Packing	2013-CE-038-SAL	276.18
George Amaral Ranches	2013-CE-033-SAL (40 ALRB 10)	1,191.30
Harbor View Farms	2013-CE-035-SAL, et al.	23,826.84
McGrath Family Farm	2013-CE-027,028-SAL	16,210.02
Nava Enterprises	2014-CE-018-SAL	5,292.99
Premiere Raspberries dba Dutra Farms	2012-CE-003-SAL, et al. (39 ALRB 6)	21,925.59
Ramos Farms	2014-CE-011-SAL	935.00
RBI Packing	2013-CE-002-VIS, et al.	116,000.00
Richter Brothers	2014-CE-017-VIS	332.00
Scheid Vineyards	2015-CE-005-SAL	4,713.67
Silent Springs	2013-CE-059-SAL	11,519.87
<b>TOTAL FY 2014-2015</b>		<b>\$202,223.46</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.

In fiscal year 2014-2015, no cases were referred to the Fund and there were no disbursements from the Fund. As of June 30, 2015, \$23,468.65 remains in the Fund for distribution.

## **VII. Mandatory Mediation and Conciliation**

The Act authorizes certified labor organizations or employers to petition the Board for an order directing the parties to “mandatory mediation and conciliation” of disputed issues. If supporting documents establish the existence of certain statutory prerequisites, the Board will order the parties to participate in the mandatory mediation and conciliation process, under which a mediator is appointed to assist the parties in resolving their outstanding issues, and failing such resolution, to issue a determination as to how the issues should be resolved, with the mediator’s determination reviewable by the Board, and the Board’s decision reviewable by the courts.

During fiscal year 2014-2015, the ALRB did not receive any requests for referral to mandatory mediation and conciliation. The Board did continue to process MMC petitions received in prior years in Arnaudo Brothers, Inc., 2013-MMC-001, Perez Packing, Inc., 2014-MMC-002, Ace Tomato Company, Inc., 2012-MMC-001 and Gerawan Farming, Inc., 2013-MMC-003.

On April 23, 2015, the Board issued its decision in Arnaudo Brothers, Inc., 2013-MMC-001 dismissing the Employer’s petition for review and ordering the mediator’s report in effect. On May 29, 2015, Arnaudo filed its petition for review of 41 ALRB No. 3 and the matter is pending before the appellate court for decision.

On October 10, 2014, in Perez Packing, Inc., 2014-MMC-002, the UFW filed a request to withdraw its request for mandatory mediation and conciliation as the parties had reached a comprehensive agreement. The Board granted that request on October 21, 2014.

On August 24, 2012, Ace Tomato Company (Ace) filed a petition for writ of review in the Fifth District Court of Appeal seeking appellate review of the Board’s decision in 38 ALRB No. 6 and a stay of that decision. On March 25, 2016, the employer filed a notice of settlement and request to dismiss the appeal in view of a global settlement. The court dismissed the case.

On December 16, 2013, Gerawan Farming, Inc. filed in the Fifth District Court of Appeal a petition for writ of review and stay of the Board's decision in 39 ALRB No. 17, in which the Board approved a collective bargaining agreement reached through the Mandatory Mediation and Conciliation process. On May 14, 2015, the court issued a published decision reversing the Board and finding the MMC unconstitutional and an improper delegation of statutory authority. On June 22, 2015, the ALRB and the UFW filed separate petitions for review. Both petitions were granted, briefing is in progress and oral argument is pending.

## **VIII. Outreach Activities**

The ALRB is actively engaged in conducting ongoing outreach activities, designed to educate farmworkers, labor organizations and agricultural employers about their rights and obligations under the Act, and the role of the ALRB.

Fiscal year 2014-2015 proved to be a very positive year for outreach activities. Staff from both regional offices, the sub-regional office, and from the office of the General Counsel in Sacramento attended various events throughout California with the goal of informing workers about their rights under the ALRA and the role of the ALRB in enforcing such rights. ALRB staff distributed outreach materials, made presentations, answered workers' questions, and collaborated with other agencies in order to educate farmworkers and others who serve the farmworker community about the availability of services from the ALRB. Highlights include:

- Multiple community fairs and outreach events attended by farmworkers including the EDD Farmworker Fair in Oxnard, and the *Dia del Trabajador Agrícola* (Day of the Farm Worker) in Greenfield, California.
- Numerous events held by the Mexican Consulate attended by nearly 1,000 farmworkers including *La Semana de los Derechos Laborales* ("Labor Rights Week"), a week-long event sponsored by the Mexican Consulate that takes place throughout the State of California.
- ALRB staff participated along with the General Counsel at the Oxnard Annual March in Honor of Cesar Chavez. During the march, the General Counsel was able to address the crowd and invite them to contact our office with any questions. There were approximately 150 participants in the march.

- The General Counsel worked with AgSafe's Executive Director Amy Wolfe to make the ALRB one of the primary presenters at AgSafe events in the 2014-2015 fiscal year and the ALRB conducted numerous trainings in Spanish and English throughout California. AgSafe is a network of farmers, farm labor contractors, packers, shippers and processors. Educational classes provided information and resources needed to prevent injuries, illnesses and fatalities.
- ALRB participated in a program called La Hora Triqui on Radio Bilingüe network. The program focused on the rights of farmworkers to form or decertify unions and to participate in protected concerted activities.
- ALRB staff attended the Kickoff event for the General Counsel Listening Tour. The event was held at Mahal Plaza in Yuba City, which provides housing and other services to farmworkers in Yuba City. Approximately 60 workers attended.
- ALRB staff met with representatives of California Rural Legal Assistance (CRLA) to train their staff on ALRB election and unfair labor practice procedures.