

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**ALRB Headquarters Office
Board Conference Room
1325 J Street, Suite 1900
Sacramento CA 95814-2944**

September 18, 2013

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck, Robinson and
Inciardi; and Analyst Massie
Others Present: Daniel Rounds, Principal Consultant, Senate Office of Research
Absent: General Counsel Torres-Guillén

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for September 4, 2013 were approved 3-0.
- 2. Public Comment:** None.
- 3. Chair's Report:** The Chair reported Accounting Officer Tess Gormley provided updated spreadsheets tracking the department's budget. Board Member Mason complimented Ms. Gormley's work for its clarity in presenting complicated budget information. The Executive Officer's Report will be placed before the General Counsel's report at future meetings.
- 4. General Counsel's Report:** The General Counsel was out of state and did not participate in this meeting.
- 5. Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
08/16/13	Gerawan Employees for a Free Election	Gerawan Farming, Inc.

The NA previously filed by Gerawan Employees for a Free Election (GEFE) has expired and no new NA has been filed. The Regional Director's investigation on the question of whether GEFE is a labor organization is still in progress.

NOTICE OF INTENT TO ORGANIZE (NO)

Filing Date	Filing Party	Employer	10% Met
08/01/13	UFW	Martines Fruits & Vegetables, Inc.	Yes
08/16/13	Gerawan Employees for a Free Election	Gerawan Farming, Inc.	No

PENDING ELECTION MATTERS:

D'Arrigo Bros. of California, 2010-RD-004-SAL

On November 2, 2010, agricultural employee Alvaro Santos filed a decertification petition with the Salinas Regional Office seeking the ouster of the incumbent representative United Farm Workers (UFW) at D'Arrigo Bros. of California. The employer is located in Monterey and Imperial Counties and has 1,665 employees. An election was held on November 17, 2010, in Spreckles, Gonzalez and Calipatria, CA. The regional director impounded the ballots pending investigation of an unfair labor practice charge filed by the incumbent union UFW. The UFW filed objections to the election on November 24, 2010. On February 24, 2011, the Salinas Regional Director issued a complaint against D'Arrigo Bros. alleging that, since October 27, 2010 and continuing, the employer initiated, participated in, aided, and/or gave support to the decertification campaign against the certified union UFW. On March 11, 2011, the Executive Secretary issued his order on the UFW's election objections. Neither party filed a request for review. On March 15, 2011, the Executive Secretary consolidated the election objections and unfair labor practice complaint as each had the same or some of the same basis for the petition and complaint. A prehearing conference was held on May 27-28, 2011 and a hearing was held from June 13, 2011 to September 7, 2011. The post-hearing briefs were filed January 23, 2011. On June 15, 2012, the Administrative Law Judge (ALJ) issued his decision in this matter. The employer filed exceptions to the ALJ's decision on August 28, 2012. On November 9, 2012, the Respondent/Employer, UFW and General Counsel filed their answering brief. On April 11, 2013, the Board issued its decision dismissing the decertification petition and setting aside the election. The Board also rejected the UFW's contention that referral to MMC is an available remedy in an unfair labor practice case. By this decision, the UFW retains its status as the certified bargaining representative of D'Arrigo's agricultural employees. On April 23, 2013, the employer filed a motion seeking reconsideration of the Board's decision in 39 ALRB No. 4, or reopening of the record, and a stay of the Board's decision. On May 3, 2013, the UFW and the General Counsel filed an opposition to the motion. On May 7, 2013 the Board denied

the Respondent/Employer's motion. On May 10, 2013, D'Arrigo Bros. filed a petition for writ of review in the Fourth District Court of Appeal, Division One, requesting review of the Board's decision in 39 ALRB No. 4. The certified record was filed with the court on May 22, 2013. The petitioner filed its opening brief on September 13, 2013. The Board's brief is due December 17, 2013.

CT&T Enterprises, 2013-RC-1-VIS

On August 29, 2013, the International Brotherhood of Teamsters Local Union 948 filed a petition for certification with the Visalia ALRB Regional Office seeking to represent the employees of CT&T Enterprises. The company is located in Woodlake CA and is involved in agricultural tarping. The company employs approximately 54 employees. The petition is under investigation and, if all statutory prerequisites are met, an election will be held on September 5, 2013 in Woodlake and possibly in Merced, CA. A pre-election conference was held yesterday to discuss the logistics of the election. On September 5, 2013, the Visalia ALRB Regional Office conducted a secret ballot election in Woodlake CA with the following election results:

Teamsters Local 948	39
No Union	<u>4</u>
Total	43

Objections to the election, if any, were due September 12, 2013. As neither party filed objections to the election, the Executive Secretary issued a certification of representative on September 13, 2013. This matter is now fully resolved and will be removed from this report.

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

COMPLAINTS WITHDRAWN

No complaints have been withdrawn.

SEVEN HEARINGS SCHEDULED

Kawahara Nurseries, Inc., 2011-CE-004-SAL

Pre-hearing was held September 12, 2013

Hearing: September 30 to October 11, 2013

On September 16, 2013, the Salinas Regional Director issued an amended complaint and backpay specification. The specification alleges that a total makewhole award of \$518,913 is owing. This includes net wages, interest and excess tax liability. The answer to the specification is due within 15 days (October 4, 2013). The hearing is scheduled to begin September 30, 2013.

D'Arrigo Bros. of California, 2012-CE-005-SAL

1st Pre-hearing held September 3, 2013.

Hearing: The respondent has filed a motion to continue the hearing currently scheduled for October 1, 2013 as its lead counsel has left the firm. New dates are being discussed.

Nakamura Sales Corporation, 2012-CE-017-SAL

Pre-hearing was held September 10, 2013.

Hearing: October 28, 2013 – November 7, 2013.

Gerawan Farming, Inc., 2013-CE-010-VIS

Pre-hearing: October 15, 2013 at 10 a.m.

Hearing: November 4, 2013.

Gurinder S. Sandhu dba Sandhu Poultry and Farming, 2012-CE-010-VIS

Pre-hearing held July 19, 2013

Hearing: November 19, 2013.

Tri-Fanucchi Farms, Inc., 2013-CE-008-VIS

Pre-hearing held October 11, 2013

Hearing: October 21, 2013.

Charanjit S. Batth, 2012-CE-033-VIS

Pre-hearing held November 13, 2013

Hearing: December 9, 2013.

CASES TO BE SET

Gerawan Farming, Inc., 2013-CE-010-VIS

Pre-hearing: November 27, 2013 at 10 a.m.

Hearing: December 16-20, 2013.

HEARINGS IN PROGRESS

None.

CASES PENDING TRANSCRIPTS, POST-HEARING BRIEFS OR ALJ/IHE DECISION

Arnaudo Brothers, LP, 2012-CE-030-VIS

The matter is pending the ALJ's decision.

Perez Packing, Inc., 2012-CE-003-VIS

The matter is pending the ALJ's decision.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

H&R Gunlund Ranches, Inc., 2009-CE-063-VIS, et al.

The matter is pending before the Board for decision.

Ace Tomato, 93-CE-037-VI, et al.

Formal bilateral settlement agreement.

CASES PENDING BOARD DECISION OR ACTION:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

BOARD DECISIONS:

Arnaudo Brothers, LP, 2013-RD-001-VIS

On September 6, 2013, the Board issued its order reconsidering sua sponte order denying request to respond to requests for review and clarifying the role of the General Counsel in the investigation of election petitions.

Administrative Order 2013-31.

Gerawan Farming, Inc., 2013-NO-003-VIS

On September 9, 2013, the Board denied the petitioner's request for review of the Regional Director's conclusion that the showing of interest was inadequate and of this decision to deny Gerawan Employees for a Free Election the names and addresses of Gerawan Farming, Inc.'s employees.

Administrative Order 2013-32.

Arnuado Brothers, Inc., 2013-MMC-001

On September 11, 2013, the Board issued its order vacating its previous order staying the MMC proceeding in light of the court's decision denying Napoles' application for a preliminary injunction. The Board also directed the parties and mediator to resume the MMC process.

Administrative Order 2013-33.

San Joaquin Tomato Growers, Inc., 93-CE-38-VI

On September 13, 2013, the Board issued a decision and order approving the General Counsel's Third Revised Makewhole Specification which calculated the amount due to workers as a result of Employer's refusal to bargain with the UFW. 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 Employer 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. 14.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

San Joaquin Tomato Growers, Inc., 2011-MMC-001

On November 17, 2011, the UFW filed a declaration requesting mandatory mediation and conciliation. On November 22, 2011, the employer filed its answer and opposition to the motion. On December 2, 2011, the Board issued an order to show cause why it should not dismiss the union's request for failure to show that the parties have not previously had a binding contract between them. The union's response was filed December 13, 2011. The employer's reply was filed December 21, 2011. On December 23, 2011, the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011, the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012, in Modesto CA. On January 18, 2012, the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. On January 25, 2012, the UFW filed a request for ruling on the pleadings. On January 26, 2012, the employer filed its opposition to that request. On January 27, 2012 the Board denied the UFW's request. The hearing on the MMC matter was held on February 8, 2012. Post-hearing briefs were received February 23, 2012. On March 19, 2012, the employer filed exceptions to the ALJ decision. Reply briefs are not provided for in the Board's regulations. On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (See 38 ALRB No. 2.) On April 3, 2012, the California State Mediation and Conciliation Service issued its list of nine mediators in accordance with Labor Code section 1164, subdivision (b). On April 10, 2012, the parties selected Matthew Goldberg as the mediator/arbitrator in this case. The mediator has issued his report to the Board and the official record in the case, which were received by the Board on July 17, 2012. According to the Board's regulations, the parties may file a petition for review of the mediator's report within seven (7) days. The petition for review was received July 26, 2012. On August 3, 2012, the Board issued its decision granting review on two

matters. The first matter is a possible math error as to the amount of picking rate increases and the second matter is the inclusion of tractor drivers in the bonus program. As to the other matters to which San Joaquin Tomato Growers, Inc. objected, the Board found that the mediator's conclusions were neither clearly erroneous, nor arbitrary or capricious, and went into effect as of the decision issuance date and are not in abeyance. The Mediator's revised report following the Board's decision was filed September 22, 2012. The parties' petition for review of that report was due October 4, 2012. Neither party filed a petition for review. The Board issued its decision on this matter on October 9, 2012. On November 8, 2012 the petitioner, San Joaquin Tomato Growers, Inc., filed a petition for writ of review and requested an immediate stay. On November 16, 2012 the ALRB filed its opposition to the request for stay. On November 28, 2012 the Board filed the certified record. The Petitioner's opening brief was filed February 1, 2013. The Board's response brief was filed March 18, 2013. The UFW's brief was filed March 19, 2013. Petitioner's reply brief was filed May 10, 2013. The matter is pending oral argument or decision.

Arnaudo Brothers, Inc., 2013-MMC-001

On February 4, 2013, the UFW filed a declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Arnaudo Brothers, Inc. to mandatory mediation and conciliation. Arnaudo Brothers grows tomatoes and other crops in San Joaquin County. The UFW was certified at Arnaudo Brothers, Inc. on January 14, 1977. On February 13, 2013 the Board granted the UFW's request and issued an order directing the parties to mandatory mediation and conciliation. The parties selected Matthew Goldberg as the mediator/arbitrator in this case and a mediation session was held on May 24, 2013 at which the mediator was informed that a petition was being filed to decertify the UFW as the representative. Based upon this information, the mediator decided to hold the MMC proceeding in abeyance pending resolution of the petition. On May 28, 2013, the UFW filed a request with the Board seeking an order directing the mediator to resume MMC. On May 30, the Employer filed a response opposing the UFW's request. . On June 5, 2013, the Board issued its decision granting the UFW's request and ordering the mediator to resume mediation (Arnaudo Brothers, Inc., 39 ALRB No. 7.) The parties met for mediation on May 24, 2013 and were scheduled to meet again on August 12, 2013. In the meantime, the parties were to continue their negotiations on their own. This matter is now stayed per the court's order of August 29, 2013.

On July 30, 2013, Francisco Napoles ("Napoles"), an Arnaudo employee, filed a petition for writ of mandate in the Third District Court of Appeal challenging the dismissal of a decertification petition he filed in Case No. 2013-RD-001-VIS. In connection with that writ application, Napoles is requesting that the Court of Appeal stay the MMC proceedings. On August 8, 2013, the Court of Appeal entered an order summarily denying the petition for writ of mandate and request for stay.

On August 15, 2013, the Board was notified that Napoles would be seeking a temporary restraining order (“TRO”) in the San Joaquin County Superior Court on August 19, 2013. On August 19, 2013, the court granted the TRO directing the Board to stay the MMC proceedings. On August 20, 2013, the Board issued an administrative order staying the MMC proceedings until further notice.

On September 9, 2013, Judge McNatt, at the hearing on preliminary injunction, agreed with the Board’s argument that the Superior Court lacked jurisdiction to issue an injunction and to hear the case. The case arose from the application of Napoles for a preliminary injunction that would prevent the Board from taking any action contingent on the certification of the UFW as the bargaining representative of Arnaudo’s agricultural employees. Napoles argued, among other things, that the UFW disclaimed its interest in representing Arnaudo’s employees and, for this reason, the UFW was no longer the bargaining representative and the ALRB’s prior referral of Arnaudo and the UFW to Mandatory Mediation and Conciliation was invalid. The Board and the UFW argued, among other things, that Labor Code section 1164.9 vested authority to review ALRB decisions exclusively in the courts of appeal and that, accordingly, the Superior Court lacked jurisdiction to issue an injunction and to hear the case. On September 13, 2013, Napoles requested that the Court limit its order to denying the preliminary injunction or, in the alternative, reconsider its order on jurisdiction.

On September 11, 2013, pursuant to the court’s decision from the bench, the Board vacated its previous order staying the MMC proceeding and directed the parties and mediator to resume the MMC process.

Gerawan Farming, Inc., 2013-MMC-003

On March 30, 2013, the UFW filed a second amended declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Gerawan Farming, Inc. to mandatory mediation and conciliation. Gerawan Farming is engaged in the growing of stone fruits, including peaches, plums, nectarines and apricots. At the time of the election in 1990, Gerawan Farming had approximately 1331 employees. The UFW was certified at the company on July 8, 1992 and has requested bargaining with the employer in July 1992, November 1994 and October 12, 2012. On April 8, 2013, the employer filed an answer to the MMC petition alleging that the statutory requirements for filing an MMC petition had not been met and that the petition should also be dismissed based on defenses of laches, estoppel, waiver, bad faith, unclean hands and abandonment as well as statutory, equitable and constitutional grounds. On April 16, 2013, the Board issued its decision referring the parties to mandatory mediation and conciliation. On April 24, 2013, the California Mediation and Conciliation Service prepared and sent the parties a list of nine mediators. The parties selected Matthew Goldberg as the mediator. The parties exchanged their positions on the remaining open issues

on May 7, 2013, and submitted their discovery requests on May 13 and 15, 2013. The parties agreed to exchange their responses on May 29, 2013. The parties met with the mediator on June 6 and 11, 2013 in Modesto, California. The parties' met several times in August 2013.

On July 10, 2013, Lupe Garcia filed a petition to intervene in the ongoing Gerawan MMC matter. On July 19, 2012, the UFW and Gerawan filed their responses to the petition. On July 29, 2013, the Board issued its decision dismissing Garcia's petition. The Board found that Garcia was not a "party" to the MMC proceedings under the Board's regulations. The Board further found that, even if the standards for intervention in civil court cases were applicable to MMC cases, Garcia did not qualify for intervention under those standards. Finally, the Board declined to address an argument made by Gerawan that members of the public have a constitutional right to attend MMC sessions as that issue was not properly raised. On August 2, 2013, Lupe 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 1st Amendment of the US Constitution. On August 21, 2013, the Board issued its decision finding no public right of access under Article I, Section 3 (b) of the California Constitution and the 1st Amendment of the US Constitution. On August 21, 2013, the Board denied the motion for reconsideration but granted the motion sua sponte because it raised issues that, if unresolved, could potentially result in the deprivation of constitutionally protected rights. On review, the Board held there was no right of access under the State and United States Constitutions.

Gerawan has also filed a lawsuit in Fresno Superior Court challenging the Board's order referring Gerawan to MMC and challenging the constitutionality of MMC generally. See court litigation case for further information: *Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al.*, Case No. 13CECS01408.

Lupe Garcia and other workers have also filed a lawsuit in Fresno Superior Court alleging that the Board's order referring the parties to mandatory mediation is facially invalid under the due process clause of the US and California Constitutions. The petitioners also allege that the Board's actions violate the workers' First Amendment rights to freedom of speech and association, as well as equal protection rights though the Petition and supporting memorandum do not appear to seek relief on that basis. See court litigation case for further information: *Lupe Garcia v. California Agricultural Labor Rel. Bd., et al.*, Case No. 13 CECG 01557, Fresno County Superior Court.

COURT LITIGATION/BOARD

Ace Tomato Company, Inc., F065589

On August 23, 2012 Ace Tomato Company (Ace) sought court review of the Board's decision in 38 ALRB No. 6 by filing a petition for writ of review with the Fifth Appellate District Court of Appeals. In 38 ALRB No. 6, pursuant to the Mandatory Mediation and Conciliation provisions of the Agricultural Labor Relations Act, the Board affirmed in full Mediator Matthew Goldberg's report fixing the terms of a collective bargaining agreement between Ace and the United Farm Workers of America (UFW), the certified representative. Ace also requested a stay of the Board's decision. The Board and UFW both filed a preliminary opposition to the appeal. At the court's invitation, the Board and the UFW filed letter briefs on the issue of venue, arguing that proper venue was in the 3rd District Court of Appeal. On October 10, 2012, Ace filed its opening brief on the merits of the petition, along with a motion to augment the record to include a sample agreement between Ace and one of its labor contractors. On October 17, 2012, the 5th District Court of Appeal issued two orders. One order denied the ALRB's and UFW's request to transfer the case to the 3rd District Court of Appeal, without prejudice to filing a request directly with the California Supreme Court. The other order granted Ace's request that the Board's decisions before the court on review be stayed pending further order or determination of the merits of Ace's petition for writ of review. On October 25, 2012, the UFW filed an opposition to Ace's motion to augment the record and the ALRB filed a response joining in the UFW's opposition. On October 30, 2012, the Board filed with the 5th DCA a petition for rehearing on proper venue. On November 14, 2012, the Board filed its response brief on the merits. The UFW filed its response on December 7, 2012. Ace filed its reply brief on January 16, 2013. On February 14, 2013, the 5th District Court of Appeal decided to review the case in full, i.e., issue a writ and set oral argument at a date to be set later. The court also has denied the Board's Petition for Rehearing on Proper Venue, and has indicated that the order staying the Board's decision and order issued by the court on October 17, 2012, will remain in effect. Oral argument has not yet been scheduled.

San Joaquin Tomato Growers, F066074

On November 8, 2012, San Joaquin Tomato Growers, Inc. (Petitioner), filed in the 5th District Court of Appeal a petition for writ of review and requested an immediate stay of the Board's decision. On November 16, 2012, the ALRB filed its opposition to the request for stay. On November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. The Board filed the certified record on November 29, 2012. Also on November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. The Petitioner's opening brief was filed February 1, 2013. The Board's response brief was filed March 18, 2013. The UFW's response brief was filed on March 19, 2013. The Petitioner's reply brief was filed May 10, 2013. The Fifth District Court of Appeal will decide whether to review the case in full, i.e., issue a writ and set oral argument at a date to be determined later.

D'Arrigo Brothers Company of California, Case No. D063886, 4th DCA, Div. 1

On May 10, 2013, D'Arrigo Bros. of California ("D'Arrigo") filed a petition for writ of review in the Fourth District Court of Appeal, Division One, requesting review of the Board's decision in 39 ALRB No. 4. The certified record was filed with the court on May 22, 2013. The petitioner's brief was filed September 13, 2013. The Board's brief is due December 17, 2013.

Premiere Raspberries, LLC, Case Number H039793, 6th DCA

On June 21, 2013, Premiere Raspberries filed a petition for writ of review in the Sixth District Court of Appeal requesting review of the Board's decision in 39 ALRB No. 6. On July 5, 2013, the Board filed the certified record with the court. The petitioner's opening brief was filed August 9, 2013. The Board's brief was filed September 13, 2013. The Petitioner's reply brief is due October 8, 2013.

Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al., Case No. 13CECS01408

On May 6, 2013, the Board received a summons in a lawsuit filed by Gerawan Farming, Inc. ("Gerawan") in Fresno County Superior Court. The lawsuit names the Board, its individual members, and its Executive Secretary as defendants. In the lawsuit, Gerawan claims that the Board exceeded its authority when it ordered Gerawan to mandatory mediation and conciliation ("MMC") with the United Farm Workers of America ("UFW") on April 16, 2013. Gerawan further claims that the MMC process violates its constitutional due process rights and seeks a declaration that the MMC statutes are unconstitutional. The Board has 30 days in which to file a response to the lawsuit. Due to the constitutional issues raised by the lawsuit, the Board contacted the Attorney General's Office and requested legal representation. That request was granted on May 7, 2013.

On May 17, 2013, Gerawan filed an ex parte application in the Superior Court for the County of Fresno (Case No. 13 CECG 01408) requesting that the court stay the April 16th order of the Board directing the company to engage in mandatory mediation and conciliation with the UFW. On May 24, 2013, the ALRB and the UFW each filed their opposition to the stay. The Court heard Gerawan's request for a stay on June 10, 2013 and denied the request on June 19, 2013.

On June 18, 2013, the Board sent a copy of the certified record to the court and parties. The Board filed its answer to the petition and complaint on June 20, 2013. On July 29, 2013, the Board filed its opposition brief to Gerawan's writ of administrative mandate. A hearing on Gerawan's petition and complaint was held on August 9, 2013. The matter is pending decision by the judge.

**Lupe Garcia v. California Agricultural Labor Rel. Bd., et. al., Case No. 13
CECG 01557, Fresno County Superior Court**

Lupe Garcia, an individual worker from Gerawan, and other concerned workers who wished to remain anonymous due to fear of retaliation, filed a lawsuit alleging that the Board's order referring the parties to mandatory mediation is facially invalid under the due process clause of the US and California Constitutions. The petitioners also allege that the Board's actions violate the workers' First Amendment rights to freedom of speech and association, as well as equal protection rights. The lawsuit was stamped filed on May 17, 2013, but was not served on the Board. An attempt to serve the Board by service on regional staff last week proved unavailing.

On June 25, 2013, the Executive Secretary accepted service of the Lupe Garcia lawsuit on behalf of the Agricultural Labor Relations Board, the Board members and Executive Secretary. Our answer to the complaint is due within 30 days, i.e., July 25, 2013. However, Garcia's counsel agreed to extend our time to respond to September 3, 2013. On June 28, 2013, the Board was notified that the Attorney General's Office will also be representing the Board in this lawsuit.

On August 5, 2013, the Board was notified that Garcia will seek to stay the MMC proceedings on an ex parte basis on August 7, 2013 pending resolution of Garcia's request to intervene in the MMC proceedings. On August 7, 2013, Judge Black of the Fresno Superior Court denied the application for a stay "for the reasons stated in his order denying the stay in the Gerawan case," and because "as of now, Mr. (Lupe) Garcia is a stranger to the MMC process, which is between Gerawan and the union, and therefore lacks standing to bring this application."

On August 30, 2013, the Board filed its answer to Garcia's Petition and Complaint. The matter is now pending a decision on Garcia's Petition and Complaint.

**Napoles v. Agricultural Labor Relations Board, San Joaquin County Superior
Court, 39-2013-00300664-CU-WM-STK**

On August 15, 2013, the Board was notified that Francisco Napoles ("Napoles") would seek a temporary restraining order ("TRO") in the San Joaquin County Superior Court on August 19, 2013. Napoles sought an order preventing Mandatory Mediation and Conciliation ("MMC") proceedings between Napoles' employer, Arnaudo Brothers, LP ("Arnaudo") and the UFW from going forward. The Board referred Arnaudo and the UFW to MMC in February, 2013 and MMC proceedings are currently ongoing (ALRB Case No. 2013-MMC-001). The TRO is requested in connection with a lawsuit filed on August 14, 2013 by Napoles naming the Board as respondent. In the lawsuit, Napoles claims that the Board exceeded its powers when it referred Arnaudo and the UFW to MMC because the UFW disclaimed its interest in representing the bargaining unit and was no longer the certified representative, that the MMC proceedings violate his constitutional right to due process, that bias on the part of ALRB employees caused a denial of due process, that the statutes governing

the MMC process are unconstitutional, and that the statute defining court jurisdiction over ALRB orders is unconstitutional.

On August 19, 2013, the hearing went forward before Judge McNatt who granted the TRO. Following argument, the judge stated that the issues were too complex for him to resolve without further time to review the materials and consider the arguments. He indicated that for this reason he would issue the TRO. Petitioner's brief was filed August 28, 2013. The Board's opposition brief was filed September 5, 2013.

On August 20, 2013, in compliance with the court's order, the Board issued an administrative order temporarily staying Mandatory Mediation and Conciliation ("MMC") proceedings between Arnaudo Brothers, Inc. ("Arnaudo") and the UFW pending the outcome of the September 9th hearing.

A hearing was held on September 9, 2013 to decide whether to issue a preliminary injunction. Napoles requested that the preliminary injunction direct the Board to refrain from enforcing the UFW's certification and from initiating or pursuing any proceeding contingent on the UFW's certification. Judge McNatt agreed with the Board's argument that the Superior Court lacked jurisdiction to issue an injunction and to hear the case.

On September 11, 2013, pursuant to the court's decision from the bench, the Board vacated its previous order staying the MMC proceeding and directed the parties and mediator to resume the MMC process.

On September 13, 2013, Napoles requested that the Court limit its order to denying the preliminary injunction or, in the alternative, reconsider its order on jurisdiction.

COURT LITIGATION/ GENERAL COUNSEL

RBI Packing LLC, Riverside Superior Court

On February 7, 2013, the General Counsel filed an ex parte application for a temporary restraining order ("TRO") to prevent the RBI Packing LLC, from terminating two crews of lemon pickers, allegedly in retaliation for their union activities. The matter was heard by Commissioner Barkley in Riverside Superior Court on Friday, February 8, 2013. Commissioner Barkley did not grant a TRO. However, Commissioner Barkley set an order to show cause hearing for February 15, 2013 to allow the General Counsel to seek a preliminary injunction ordering reinstatement and an end to discrimination against workers who were fired for exercising their rights.

On February 15, 2013 Riverside County Superior Court Judge Perantoni granted the ALRB General Counsel's application for a preliminary injunction pursuant to California Labor Code section 1160.4. Judge Perantoni found that the General

Counsel had reasonable cause to believe that RBI Packing, LLC discriminatorily fired two crews of lemon harvesters upon learning that the workers were organizing with the United Farm Workers of America (“UFW”) union. Judge Perantoni issued a preliminary injunction to remain in effect until the ALRB's charge is resolved through its administrative proceeding. The Judge further ordered RBI Packing, LLC to cease and desist from discriminating against employees who were organizing with the UFW, to cease and desist from refusing to farm the lemon ranch in retaliation for the workers' union activities, and to first offer all agricultural jobs (at the same or superior wages and conditions) that become available to the employees who engaged in organizing activity, and that the ALRB shall have access to the ranch and to payroll records in order to monitor and ensure compliance with the Preliminary Injunction. RBI Packing, LLC has approximately 55-60 non-supervisory agricultural workers. Court granted the injunction of February 15, 2013. On August 15, 2013, after a case management conference, the case was transferred to Indio, California, where assignment is pending.

**ALRB v. Ace Tomato Co., Inc., Case No. 39-2012-00287876-CU-PT-STK
(San Joaquin County Superior Court)**

On October 4, 2012, the General Counsel was granted leave by the Board to seek enforcement of two outstanding investigative subpoenas related to three unfair labor practice charges against Ace Tomato Co., Inc. On October 5, 2012, she filed an ex-parte Application for enforcement of the subpoenas in San Joaquin Superior Court in Stockton, CA. The Ex-Parte hearing was calendared for 8:15 a.m. on October 9, 2012 in front of Judge Linda Lofthus. Ace sought to have the matter transferred to Judge Barbara Kronlund, arguing that the present subpoena enforcement action was substantially related to a prior temporary restraining order application heard by Judge Kronlund. Both parties met initially with Judge Lofthus in chambers. However, after a break in which Judge Lofthus conferred with Judge Kronlund, the matter was transferred to Judge Kronlund. Judge Kronlund refused to hear the matter ex-parte and set a hearing on shortened time for October 24, 2012. After Ace represented to the Court that all matters were stayed based on the October 17, 2012 stay order issued by the 5th District Court of Appeal in Case No. F065589, Judge Kronlund removed the matter from calendar, without proper notice to the ALRB. On October 22, 2012, the General Counsel filed an Opposition to the Respondent's Notice of Stay of the Proceedings to Enforce the General Counsel's subpoenas. There has not yet been a response from the Court to the General Counsel's opposition.

Arnaudo Bros. LP/Inc., San Joaquin Superior Court

Case #39-2013-00299678-CU-PT-STK

On July 23, 2013, the General Counsel of the ALRB filed an Ex Parte Application seeking a TRO and Preliminary Injunction against Arnaudo Bros. LP and Arnaudo Bros. Inc. (Arnaudo) based on allegations of threats and intimidation against a farm worker for participating in an ALRB process and engaging in protected union activity. On July 26, 2013, after oral argument, Judge Roger Ross of the San Joaquin County

Superior Court granted the General Counsel's Application for a Temporary Restraining Order against Arnaudo. Judge Ross ordered Arnaudo to cease and desist from intimidating and threatening its employees because of their support for the union and participation in ALRB processes, and barred the employer from evicting or taking adverse employment action against Noe Martinez, unless it can show just cause for such action. Finally, the Judge Ross ordered the parties to appear for a hearing on an Order to Show Cause as to why a preliminary injunction should not issue keeping the Judge's order in place during the pendency of the underlying ULP charge and granting the ALRB access to provide noticing to Arnaudo Brothers employees about their rights under the Act. The General Counsel's petition for a preliminary injunction was heard on August 15, 2013 in the San Joaquin Superior Court in Stockton, California. After oral argument, Judge Holland took the matter under submission and extended the effectiveness of the TRO until he reaches a decision on the General Counsel's request for a preliminary injunction.

ALRB v. Gerawan Farming, Inc., 13CECG02594

On August 19, 2013, the General Counsel of the ALRB filed an ex part application for a Temporary Restraining Order ("TRO") against Gerawan Farming, Inc. based on allegations that Gerawan's supervisors unlawfully coerced and intimidated its agricultural employees into signing a petition to decertify the United Farm Workers of America ("UFW"), the employees' current certified bargaining representative. On August 21, 2013, Judge Jeffrey Hamilton, Jr. of the Fresno County Superior Court granted a temporary restraining order enjoining Gerawan Farming, Inc., its partners, agents, and others under its direction except for non-supervisory employees from approving, encouraging and circulating a decertification petition among its employees, interrogating employees about their union sympathies, and threatening employees with job loss for supporting the Union. Following the hearing, the General Counsel entered into an agreement with Gerawan that allows ALRB staff to train all of Gerawan's supervisors and their farmworkers on their rights and responsibilities under the ALRA.

MISCELLANEOUS:

Adoption of an updated procurement policy will be placed on the agenda for October.

The proposed relocation of the El Centro Regional Office will be tabled until a written report from the General Counsel is received.

Bilingual Implementation Plan was reviewed and submitted to Analyst Saldivar.

The State Financial Integrity and State Manager's Accountability Act of 1983 (FISMA) Report is due by December 31, 2013.

On September 17, 2013, the Board received a letter from Ace Tomato Counsel being highly critical of a recent filing by the United Farm Workers and of a press release issued by the ALRB General Counsel.

An updated compliance report was timely received from the Regional Directors.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – Edits have been made to the fact sheets and poster. A different image will be needed for the poster. There will be a follow-up meeting next week with LWDA to review the materials. The Chair is working to ensure the materials are neutral.
- b. Annual Report – Nothing new to report.
- c. Election Manual – Nothing new to report.
- d. Master Calendar – Executive Secretary Barbosa provided a status report on the calendar of upcoming projects.

Both Regional Directors advised the Executive Secretary that they are available for the quarterly RD meetings on the dates provided by the Board but cautioned that there might be conflicts given the current hearing or court litigation calendar.

7. Regulations – *Discussion of Potential Subjects for Rulemaking In 2012: Items listed in the Rulemaking Calendar (Unit Clarification Procedure, Voter Eligibility Exclusions (Family Members), Exculpatory Evidence, Electronic Filing)*

Board Counsel Heyck is enrolled in the Office of Administrative Law class entitled *Rulemaking Under the California APA*.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB*

Board Counsel Robinson reported that SB 25 25 (Steinberg) ALRB Mandatory Mediation and Conciliation As of September 12, 2013, ordered to Senate Inactive File at the request of Senator Steinberg. A written status report was provide on AB 263, 383, 729 and SB 666.

9. Personnel – *Progress on filling ALRB positions.*

The Chair has asked Personnel to draft a duty statement and job announcement for a Staff Services Manager position for the Administration Supervisor position for the Board and General Counsel to review.

10. Roundtable

On October, 11, 2013, Chairwoman Shiroma will be a panelist at the 24th annual Envisioning California Conference, *Food for Thought: Current Food Trends and*

Policies in the Golden State, at the Sacramento Public Library, sponsored by the Center for California Studies, California State University, Sacramento.

Mr. Rounds inquired about the department's plans regarding filling vacant positions. Ms. Shiroma indicated the department should be able to fill all positions except one that is contracted with the Department of Industrial Relations. Next Spring the department will reevaluate staffing needs. Mr. Rounds asked how the department would handle the increased costs should the Governor fill vacant Board Member positions. Ms. Shiroma indicated that Labor and Workforce Development Agency (LWDA) would assist the department in that event. Mr. Rounds also inquired about the department's efforts to true up expenses. Ms. Shiroma indicated that while some operating expenses and personnel costs have increased, those increases have not been correspondingly increased in the department's budget. LWDA is providing assistance with truing up the budget which might require a two-year process.

The public meeting adjourned at 10:16 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.