

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**EDD Auditorium
722 Capitol Mall
Sacramento, California 95814**

December 4, 2013

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén, Assistant General Counsel Peña,
Administrative Assistant Cooper
Staff Present: Board Counsel Inciardi; ALJ Soble and Analyst Massie
Others Present: Daniel Rounds, Principal Consultant, Senate Office of Research;
Barry Bedwell, President, California Grape and Tree Fruit League;
Mark Woo Sam, General Counsel, Labor and Workforce
Development Agency

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for November 6, 2013, were approved 3-0.
- 2. Public Comment:** Mr. Bedwell of the California Grape and Tree Fruit League informed the Board of a resolution adopted by the Fresno County Board of Supervisors on December 3, 2013, concerning the impoundment of ballots in the decertification election at Gerawan Farming. The resolution asked for the ballots to be tabulated. The ballots were impounded pending resolution of the election objections and challenged ballots.
- 3. Chair's Report:** The work of the Board has doubled within the last year straining current board resources. Currently the budget is on track and expenditure projections are being updated. The Chair, General Counsel, Executive Secretary and Administration will meet to discuss additional needs of the department. The Board acknowledged the help LWDA sister agencies have provided. The Chair and Member Rivera-Hernandez participated in agricultural tours of strawberry and pepper harvesting in Imperial County while visiting the El Centro sub-regional office two weeks ago. Ms. Shiroma expressed appreciation to Mr. Bedwell for arranging for the tours. The Board will follow up on the potential for relocating the El Centro office to the Coachella area. Additionally, the Board will provide an opportunity for the public to provide comment on any recommended locations.

4. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

No new NAs have been filed since the Board's last meeting on November 6, 2013.

NOTICE OF INTENT TO ORGANIZE (NO)

No new NOs have been filed since the Board's last meeting on November 6, 2013.

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. 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. On June 15, 2012, the Administrative Law Judge (ALJ) issued his decision in this matter. On April 11, 2013, the Board issued its decision dismissing the decertification petition and setting aside the election. 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 petitioner filed its opening brief on September 13, 2013. The Board's brief is due December 17, 2013.

Dole Berry North, 2013-RD-001-SAL

On October 18, 2013, Petitioner Jose Aguilar, an employee at Dole Berry North, filed a decertification petition with the Salinas ALRB Regional Office seeking to remove the incumbent bargaining representative, the United Farm Workers. Dole Berry Fresh is a strawberry grower located in Salinas CA with approximately 745 employees. On October 25, 2013, the ALRB conducted a secret ballot election but impounded the ballots based on the filing of charges by both the employer and union. On November 1, 2013, the UFW filed six objections alleging unlawful employer assistance, unlawful employer assistance by disparate treatment, a defective eligibility list, unlawful promise of benefit, misrepresentation, and forged signatures.

On November 22, 2013, the Board issued its decision on the UFW's election objections. It held the first two objections in abeyance because they alleged facts and conduct that mirror those alleged in unresolved unfair labor practice charges filed by the UFW. Pursuant to the Labor Code section 1149, which grants the General Counsel exclusive jurisdiction over the investigation and prosecution of unfair labor practice

charges, and the Board's decisions in *Mann Packing* (1989) 15 ALRB No. 11 and *Gallo Vineyards* (2008) 34 ALRB No. 6, the Board decided to hold resolution of these objections in abeyance pending the resolution of the overlapping unfair labor practice charges by the General Counsel. The Board held the third objection in abeyance pending a tally of ballots, as it is not possible to determine whether a defective eligibility list has had an outcome determinative effect without knowing whether the number of defective addresses on the eligibility list exceed the number of votes necessary to change the outcome of the election. The Board dismissed the remaining three election objections for failure to state a prima facie case. Any request for reconsideration is due December 6, 2013.

On November 22, 2013, the Regional Director forwarded to the Board all challenged ballot declarations and all other evidence in her possession relevant to the eligibility of the challenged voters. By December 5, 2013, the parties may file with the Executive Secretary declarations and/or documentary evidence in support of their positions as to the eligibility of the challenged voters, accompanied by argument explaining their positions and the relevance of the proffered evidence. Within five (5) days of service of the other parties' evidence and argument, any party may file argument in response.

Gerawan Farming, Inc., 2013-RD-003-VIS

On October 25, 2013, Gerawan Farming, Inc. farm worker Silvia Lopez filed a new decertification petition with the ALRB Regional Office. On October 28, 2013, the Salinas ALRB Regional Director dismissed the new petition as untimely because on October 25, 2013, the Board issued its decision as to the Gerawan mediator's report, granting review as to only six provisions, and, in the Regional Director's view, that action by the Board resulted in an executed collective bargaining agreement between Gerawan and the United Farm Workers of America (UFW). The Regional Director concluded that no petition for an election may proceed while there is a collective bargaining agreement in effect. October 28, 2013, later that same day, the Board issued an order vacating the Regional Director's dismissal of the above-captioned petition for decertification. On October 31, 2013, the ALRB Visalia Regional Director issued a letter blocking a decertification petition filed by Sylvia Lopez seeking decertification of the UFW as the representative of the agricultural employees of Gerawan Farming, Inc. (Gerawan). The blocking decision was based on the pendency of several unfair labor practice complaints against Gerawan and would have resulted in the dismissal of the decertification petition. On November 1, 2013, the Board issued an order vacating the Regional Director's decision and ordering that an election go forward. The Board held that, under the unique circumstances of the case, there were sufficient questions concerning the degree to which any taint caused by certain of the alleged unfair labor practices, as well as questions concerning the use of an unfair labor practice complaint issued the day before the decision to block the election, to justify holding the election, impounding the ballots, and resolving the issues through election objections and litigation of the complaints. The Board ordered the election to be held on Tuesday, November 5, 2013, and the ballots were

impounded pending resolution of any election objections and related unfair labor practice complaints.

On November 1, 2013, the UFW filed a motion to vacate the Board's decision or, in the alternative, for reconsideration of its decision. On November 1, 2013, the Board denied the motion for lack of proper service. The UFW renewed its motion on November 4, 2013 and the Board, on this same day, denied the motion.

The election was held on November 5, 2013, and the ballots were impounded. While the election was taking place, the employer filed a request for review of the Regional Director's decision to segregate the ballots of several crews comprising approximately 800 employees. The petitioner joined in that request and the UFW opposed the request. The Board did not issue an order regarding these filings. The UFW, Gerawan and the Petitioner all filed objections to the election. The Board's decision on election objections is pending.

On November 7, 2013, the Board issued an order directing the Regional Director to forward to the Board all challenged ballot declarations and all other evidence in his or her possession relevant to the eligibility of the approximately 680 challenged voters and shall serve the same on all parties to the election by November 21, 2013. The Regional Director complied with the Board's Order and forwarded the challenged ballot declarations to the Board. The Regional Director also provided approximately 10,000 pages of documents to the Board to determine which documents should be turned over to the parties as responsive to the Board's Order. On December 5, 2013, the parties may file with the Executive Secretary declarations and/or documentary evidence in support of their positions as to the eligibility of the challenged voters, accompanied by argument explaining their positions and the relevance of the proffered evidence. Within five days of service of the other parties' evidence and argument, any party may file argument in response.

On December 2, 2013, Gerawan filed a letter in response to the Executive Secretary's Notice of Receipt of Prohibited Communications regarding Gerawan Farming, Inc., 2013-MMC-003 and Gerawan Farming, Inc., 2013-RD-003-VIS. Gerawan requests: 1) a statement describing the circumstances of the prohibited communications between the UFW and ALRB; 2) that ALRB investigate whether UFW made additional prohibited ex parte communications to other members of the ALRB--staff or otherwise; 3) that ALRB remedy the wrongdoing by vacating its November 19th MMC order and grant Gerawan's request for a stay of the process; and, 4) that ALRB consider penalties against UFW under section 20760 of Title 8 of the California Code of Regulations. The letter has been referred to the Board for consideration.

COMPLAINT REPORT

COMPLAINTS ISSUED

Fresh Origins LLC, 2012-CE-032

On November 12, 2013, the Regional Director for the Visalia Regional Office issued a complaint against Fresh Origins, LLC. The complaint alleges that the employer unlawfully fired two employees for jointly complaining to company supervisors about the mistreatment of workers by one of the foreman.

COMPLAINTS WITHDRAWN

None.

THREE HEARINGS SCHEDULED

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

Pre-hearing: November 13, 2013

Hearing: December 9, 2013.

George Amaral Ranches, Inc., 2013-CE-033-SAL

Hearing: January 15, 2014.

The respondent has requested a settlement conference. The Executive Secretary is making arrangements for the conference.

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

Pre-hearing: January 13, 2014 at 1:00 p.m.

Hearing: February 18, 2014

CASES TO BE RE-SCHEDULED FOR HEARING

Fresh Origins, LLC, 2012-CE-032-VIS (Doug)

Pre-hearing: January 6, 2013 @ 1pm

Hearing: February 10-11, 2014 at 10 a.m. (two days)

Gill Ranch Company LLC, 2013-CE-022-SAL (Tom)

2013-CE-022-SAL

Pre-hearing: January 6, 2013 @ 10 am

Hearing: January 21, 22 and 23 at 10 a.m. (three days)

Gerawan Farming, Inc., 2013-CE-027-VIS

On November 26, 2013, this case was taken off calendar pending issuance of the Board's decision in the decertification case.

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

The hearing was canceled due to the election held on November 5, 2013. The matter will be rescheduled pending issuance of the Board's decision in the decertification case.

HEARINGS IN PROGRESS

None.

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

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

Hearing ended on October 3, 2013. The post-hearing briefs are due December 11, 2013.

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

The hearing ended on November 25, 2013. The matter is pending the receipt of transcripts and the filing of post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

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

On November 5, 2013, the Administrative Law Judge issued his decision in this case. The respondent filed exceptions to the ALJ's decision on December 2, 2013. Any replies to the exceptions are due December 16, 2013.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

On November 5, 2013, the Administrative Law Judge issued his decision in this case. The respondent filed exceptions to the ALJ's decision on December 2, 2013. Any replies to the exceptions are due December 16, 2013.

CASES PENDING BOARD DECISION OR ACTION:

Ace Tomato Company, Inc. (makewhole case), 93-CE-37-VI

On September 24, 2013, the Board issued Administrative Order 2013-35 approving the parties' Formal Bilateral Settlement Agreement in Ace Tomato Company, Inc. with conditions. Among the conditions are removing terms that would have settlement monies directed toward charitable endeavors not consistent with purpose of the Agricultural Labor Relations Act, i.e., remedying unfair labor practices and aggrieved farm workers, and ensuring that the agreement does not settle claims other than those listed in the caption, which would be a violation of Board regulation 20298 (a). On October 3, 2013, the General Counsel filed a request for an extension of time to file

motion for reconsideration of the Board's Order conditionally approving formal bilateral settlement that was granted on October 4, 2013. On October 7, 2013, Ace Tomato Company, Inc. filed a separate motion for reconsideration of the Board's order that was denied as untimely on October 8, 2013. On October 11, 2013, the General Counsel and UFW submitted a motion for reconsideration of the Board's order. On October 18, 2013, the Board issued its order denying General Counsel and UFW's motion for reconsideration. The order provides that the parties have 15 days to submit a settlement agreement that conforms to Administrative Order No. 2013-15. If the parties fail to do so, the Board will resume sole jurisdiction over compliance in 93-CE-37-VI and 2012-MMC-001 and schedule a settlement conference with the parties toward the goal of achieving settlement of all matters within the Board's sole jurisdiction without the agency of the General Counsel. On November 4, 2013, the Board granted the General Counsel's request for an extension of time to file a formal bilateral settlement agreement in compliance with the Board's administrative orders. The Board only granted a two-week extension and the settlement statement was due November 19, 2013.

On November 18, 2013, the General Counsel issued a Third Revised Makewhole Specification. Per the filing, "The parties did not file a conforming settlement agreement as Ace rejected the General Counsel's proposed agreement." The Third Revised Makewhole Specification indicates that 2,682 individuals are due makewhole awards totaling \$2,404,346 which includes interest through September 30, 2016. The Board now intends to pursue settlement of this case directly with the respondents and charging party over those matters within its exclusive jurisdiction. Also, the matter is pending the filing of an answer to the third revised makewhole specification. The General Counsel resumed litigation of the remaining Ace matters that were included in the global settlement agreement rejected by the Board.

A settlement conference has been scheduled with the parties for December 17, 2013.

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

The matter is pending before the Board for decision.

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

ALJ's decision issued September 30, 2013.

The employer filed exceptions to the ALJ decision on October 24, 2013.

The General Counsel filed its reply to exceptions on November 7, 2013.

The matter is pending before the Board for decision.

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

The employer filed exceptions to the ALJ decision on October 21, 2013.

The General Counsel filed its reply to exceptions on November 19, 2013.

The matter is pending before the Board for decision.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

BOARD DECISIONS/ADMINISTRATIVE ORDERS:**Dole Berry North, 2013-RD-001-SAL**

On November 8, 2013, the Board issued an order directing the Regional Director to forward to the Board and serve on all parties to the election all challenged ballot declarations and all other evidence in her possession relevant to the eligibility of the challenged voters by November 22, 2013. Also, within ten (10) days of service of the challenged ballot declarations and other evidence, the parties may file with the Executive Secretary, as agent of the Board, and serve on all other parties to the election, declarations and/or documentary evidence in support of their positions as to the eligibility of the challenged voters, accompanied by argument explaining their positions and the relevance of the proffered evidence; and within five (5) days of service of the other parties' evidence and argument, any party may file argument in response. (Admin. Order No. 2013-51.)

Gerawan Farming, Inc., 2013-MMC-003

On November 13, 2013, Gerawan filed a motion for temporary stay of the mandatory mediation and conciliation proceeding pending resolution of the objections and challenges to the decertification election. On November 14, 2013, the Board summarily denied the motion. (Admin. Order No. 2013-52.)

Gerawan Farming, Inc., 2013-MMC-003

On November 19, 2013, the Board issued its decision ordering that the mediator's second report take immediate effect as a final order of the Board as neither party filed a petition for review of the report. The Board incorporated by reference its earlier decisions that addressed various claims made by Gerawan. Those orders, together with this Order, constitute the final order of the Board subject to review pursuant to Labor Code section 1164.5.

Dole Berry North, 2013-RD-001-SAL

On November 22, 2013, the Board issued its decision on the UFW's objections to the election. The Board held three objections in abeyance as they overlapped with allegations contained in unfair labor practice charges filed by the UFW. The Board dismissed the remaining objections for failure to state a prima facie case. Any request for reconsideration is due December 6, 2013.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

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.

On October 26, 2013, Mediator Goldberg advised the Executive Secretary that he had received the UFW's motion for order directing parties to negotiate and for order to set final mediation date in Arnaudo Brothers, 2013-MMC-01. He had scheduled a conference call for October 28, 2013, and planned to rule on that motion at that time. This office is unaware of the mediator issued a ruling on that date.

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 requested 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. Napoles did not seek review with the California Supreme Court and the matter is now final.

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. 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. . On September 19, 2013, the Board filed an opposition to Napoles' request and requested that the court sign the Board's proposed order. The UFW has also opposed Napoles' request. On October 18, 2013, the UFW filed a motion for order directing parties to negotiate and for order to set final mediation date. The motion was submitted to the mediator, and alternatively to the Board, for an order requiring the parties to complete the MMC process by November 19, 2013. The mediator's final report is pending.

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. The Board and the UFW have opposed the request and a decision by the Court is pending. On October 16, 2013, the court issued an order denying the application for preliminary injunction and dismissing petition for writ of mandate and declaratory relief.

See court litigation for court case also involving this case.

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 mediation proceeding has concluded and the mediator filed his final report on September 30, 2013.

On October 15, 2013, Gerawan filed a petition for review with the Board seeking review of virtually all of the mediator's report. On October 25, 2013, the Board issued its decision in Gerawan granting review on six provisions in the mediator's report and remanding the matter to the mediator to resolve the problems identified by the Board. In all other respects the Board affirmed the mediator's report because Gerawan failed to show that the mediator's findings of material fact were clearly erroneous, or that the provisions fixed in his report were arbitrary or capricious in light of his findings of fact.

On October 25, 2013, the UFW filed with the ALRB a request for an order immediately implementing certain provisions of the report of mediator Matthew Goldberg (the "Mediator") in a Mandatory Mediation and Conciliation ("MMC") case between the UFW and Gerawan Farming, Inc. ("Gerawan"). After the Mediator's report issued, Gerawan had filed a petition for review of the report which challenged essentially all of its provisions. The Board accepted review of six of the provisions, and denied review as to the remainder. (Gerawan Farming, Inc. (2013) 39 ALRB No. 16.) The UFW argued that all the provisions of the report except for the six provisions accepted for review should go into immediate effect. On October 30, 2013, the Board issued its order disagreeing with the UFW. The Board noted that Labor Code 1164.3 required that, while provisions of a report that are not challenged go into immediate effect, any provision that is the subject of a petition for review does not go into immediate effect regardless of the scope of the provisions the Board accepts for review. Given that the statutory language was not ambiguous and did not lead to absurd results, the Board concluded that it was required to apply the statute according to its plain meaning and deny the UFW's request. Where the Board orders additional mediation, as it has done in this case, the mediation shall commence within thirty (30) days of the issuance of the Board's order, or as soon as practical. On November 6, 2013, the mediator submitted his second and final mediator's report. Any petition for review

is due November 15, 2013. Neither party filed a petition for review of the mediator's second report.

On November 13, 2013, Gerawan filed a motion for temporary stay of the mandatory mediation and conciliation proceeding pending resolution of the objections and challenges to the decertification election. On November 14, 2013, the Board summarily denied the motion.

On November 19, 2013, the Board ordered that the mediator's second report take immediate effect as a final order of the Board. The Board incorporated by reference its earlier decisions that addressed various claims made by Gerawan. Those orders, together with this Order, constitute the final order of the Board subject to review pursuant to Labor Code section 1164.5. The parties have 30 days to seek review of this decision before the court of appeals or Supreme Court. Any petition for review is due December 19, 2013.

See court litigation for court cases also involving this case. (*Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al.*, Case No. 13CECS01408; *Lupe Garcia v. California Agricultural Labor Rel. Bd., et al.*, Case No. 13 CECG 01557, Fresno County Superior Court.)

On December 2, 2013, Gerawan filed a letter in response to the Executive Secretary's Notice of Receipt of Prohibited Communications regarding Gerawan Farming, Inc., 2013-MMC-003 and Gerawan Farming, Inc., 2013-RD-003-VIS. Gerawan requests: 1) a statement describing the circumstances of the prohibited communications between the UFW and ALRB; 2) that ALRB investigate whether UFW made additional prohibited ex parte communications to other members of the ALRB--staff or otherwise; 3) that ALRB remedy the wrongdoing by vacating its November 19th MMC order and grant Gerawan's request for a stay of the process; and, 4) that ALRB consider penalties against UFW under section 20760 of Title 8 of the California Code of Regulations. The letter has been referred to the Board for consideration.

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. On September 24, 2013, the court sent a letter to the parties advising them that it has come to their attention that the case underlying this proceeding may have settled. If this is correct, the question arises whether the court should dismiss this proceeding as moot and vacate its stay order. The court directed the parties to advise the court of the status of this proceeding within 30 days from the date of this letter, i.e., October 24, 2013. On October 23, 2013, the ALRB informed the court that the parties have until November 4, 2013 to file a settlement agreement for the Board's approval that complies with a previous Board order. That settlement agreement would include settlement of the matter that is currently lodged before the court. The ALRB requested the court's indulgence for more time to pursue settlement of this and other matters between the parties. The ALRB further asked the court's indulgence to file a status update on November 8, 2013. On November 4, 2013, the Board issued its order granting the General Counsel motion for an extension of time to file a formal bilateral settlement agreement in compliance with Administrative Orders 2013-35 and 2013-42. The Board granted a two-week extension of time and set the due date for filing the agreement for November 19, 2013. Admin. Order No. 2013-48. On November 12, 2013, the Board advised the court that the parties had been given an extension to November 19, 2013 to file a settlement agreement for the Board's approval that complies with a previous Board order.

On November 25, 2013, the Board advised the court that the parties were unable to reach settlement of this case and that the Board has decided to meet directly with the parties to facilitate settlement. The Board requested that this matter be held in abeyance until the Board has had an opportunity to explore settlement with the parties and hopefully arrive at an agreement that will resolve the matter before the court.

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 Appellant's reply brief was filed October 8, 2013. All briefing has been completed and the matter is pending oral argument or decision.

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 motion was held on August 9, 2013. On September 26, 2013, the judge issued his decision denying Gerawan's petition for administrative mandate or, in the alternative, ordinary mandate. The Board may seek

judgment on Gerawan's non-writ claims or may await an appeal by Gerawan of the denial of the writ.

On November 20, 2013, Gerawan filed a notice of appeal from Judge Black's order. Gerawan also designated the record on appeal. The superior court clerk will now prepare the record on appeal (consisting of all filings to the superior court and the Judge's order), which can take 1-2 months. After that, it will be transmitted to the Court of Appeal and a briefing schedule will be set.

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.

Gerawan Farming, Inc. v. ALRB et al., 13 CECG 03374

On October 29, 2013, the ALRB, the Board members and Executive Secretary were personally served with 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 violated the US and California State Constitutions by

denying a worker's request to attend mandatory mediation and conciliation sessions between the UFW and Gerawan. The lawsuit seeks a declaration that the Board's August 21, 2013 decision and order is unconstitutional under the US and CA Constitutions, a declaration that the MMC proceedings conducted pursuant to the Board's April 16, 2013 decision and order are null and void, for preliminary and permanent injunctive relief, for damages, costs, and attorney fees incurred and for such other relief as the court may deem proper.

The Board's answer to the lawsuit is due December 17, 2013.

United Farm Workers (San Joaquin Tomato Growers) v. ALRB, C075210

On November 22, 2013, the United Farm Workers filed a petition for writ of review of the Board's decision in 39 ALRB No. 15 with the 3rd DCA. The court, on this same date, notified the Board that the certified record was due December 2, 2013. On November 26, 2013, the Board filed a motion seeking a 35-day extension to file the certified record. On December 3, 2013, the court granted the Board's request and the record is now due January 6, 2014. Once the record is filed, Petitioner shall file an opening brief in this matter within 35 days from the filing of the certified record from Respondent Board. On November 27, 2013, Real Party in Interest San Joaquin Tomato Growers notified the 3rd DCA that a related case had been filed with the 5th DCA concerning San Joaquin Tomato Growers on November 22, 2013.

San Joaquin Tomato Growers v. ALRB, F068406

On November 22, 2013, San Joaquin Tomato Growers filed a petition for writ of review of the Board's decision in 39 ALRB No. 15 with the 5th DCA. The court, on this same date, notified the Board that the certified record was due December 2, 2013. On November 26, 2013, the Board filed a motion seeking a 35-day extension to file the certified record. A ruling on this motion is pending. Once the record is filed, Petitioner shall file an opening brief in this matter within 35 days from the filing of the certified record from Respondent Board.

Francisco Napoles v. ALRB, C075213

On November 20, 2013, the Francisco Napoles filed a notice of appeal with the 3rd DCA. In the lawsuit filed with the superior court, Napoles claimed 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 violated 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. The court held that it lacked jurisdiction to issue an injunction and to hear the case and the petitioner seeks review from this decision.

On December 2, 2013, Napoles filed Civil Case Information Statement and Civil Appeal Mediation Statement. The Board's Civil Appeal Mediation Statement will be due ten days after Napoles' statement is filed, December 12, 2013.

Gerawan Farming, Inc. v. ALRB,

On November 20, 2013, Gerawan Farming, Inc. filed a notice of appeal concerning the lawsuit that it brought in Fresno Superior Court challenging its referral to Mandatory Mediation and Conciliation (“MMC”). Gerawan’s appeal challenges an order entered by the Fresno Superior Court denying Gerawan’s request for a writ of mandate which would have invalidated the Board’s order referring Gerawan and the United Farm Workers of America to MMC. They also designated the record on appeal.

COURT LITIGATION/ GENERAL COUNSEL

RBI Packing, LLC, Riverside Superior Court, No. RIC 1301644, 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 in Blythe.

**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 sought and granted leave to enforce 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 (see above), 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., Case No. 39-2013-00299678-CU-PT-STK (San Joaquin Superior Court)

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 in Department 13 of the San Joaquin Superior Court in Stockton, California, at 9:00 a.m. on Thursday, August 8, 2013 before Judge Lesley Holland. On September 16, 2013, Judge Holland denied the General Counsel's request for a preliminary injunction and vacated the TRO because the Judge found that the General Counsel did not make an adequate evidentiary showing of a threat, in light of the speech protections granted to the employer under Labor Code §1155. The General

Counsel filed a notice of appeal of the Superior Court Judge's denial of the preliminary injunction on November 14, 2013.

ALRB v. Gerawan Farming, Inc., Case No. 13CECG02594

On August 19, 2013, the General Counsel of the ALRB filed an ex parte application for a Temporary Restraining Order ("TRO") against Gerawan Farming, Inc. based on allegations that Gerawan's supervisors have unlawfully coerced and intimidated their agricultural employees into signing a petition to decertify the United Farm Workers (UFW) as the employees' bargaining representative. This filing is related to unfair labor practice charge, 2013-CE-027-VIS that has now gone to complaint. 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 will allow ALRB staff to train all of Gerawan's supervisors and agricultural employees with respect to their rights and responsibilities under the ALRA.

On September 11, 2013, the parties appeared before Judge Hamilton for oral argument on the General Counsel's petition for injunctive relief and Gerawan's ex parte application for an order expediting discovery. After argument, the Judge took the matter under submission and extended the TRO (granted on August 21, 2013) until he issues his ruling.

The General Counsel's petition for a preliminary injunction against Gerawan Farming, Inc. in case 2013-CE-027-VIS (Fresno Superior Court Case 13CECG02594) was granted on September 19, 2013 in its entirety and Gerawan's ex parte application for expedited discovery related to the matter was denied. The Court found that there was good cause to order Gerawan to "cease and desist from approving, encouraging, and circulating a decertification petition among its employees; cease and desist from interrogating employees about their union sympathies; and cease and desist from threatening employees with job loss for supporting the Union." This order is consistent with the TRO that was granted earlier. The injunction will be in effect until the ALRB's final adjudication of the case on its merits; provided, however, that if conditions which led to the injunction being found just and proper materially change, either party may move the court to terminate or modify the injunction, by way of a regularly noticed motion.

MISCELLANEOUS:

On December 3, 2013, the Executive Secretary notified Robert Silva, Staff Services Manager at California Unemployment Insurance Appeals Board (CUIAB), that the

ALRB does not have any issue with respect to CUIAB's request to amend the interagency agreement to include only the loan of ALJ Thomas Sobel and omit the other two possible administrative law judge loans thereby keeping the contract amount under \$200,000.

On December 2, 2013, the Regional Directors submitted their monthly compliance reports. According to the reports, there are four (4) final board orders and six (6) informal settlement agreements in compliance. Final Board orders: Hess Collection Winery, 2003-MMC-001-SAL; Bud Antle, Inc., 2013-CE-007-2013; San Joaquin Tomato Growers, 93-CE-38-VI (20 ALRB No. 13); Ace Tomato Company, Inc., 93-CE-37-VI (20 ALRB No. 7). Informal settlement agreements in compliance: Lakeside Organic Gardens, 2011-CE-022-SAL; Nakamura Sales Corporation, 2012-CE-017-SAL, et al.; D'Arrigo Brothers Company of California, 2012-CE-019-SAL, et al., Silent Springs, LLC, 2013-CE-059-SAL; Betteravia Farms, 2010-CE-043-VIS, et al; R&R Ranches, 2013-CE-024-VIS.

The department's response to the United Farm Worker's public record act request has been extended 30 days to December 18, 2013.

5. **General Counsel's Report:** The General Counsel stated that there are really dire needs of the agency. Ms. Torres-Guillén discussed in detail the budget change proposal requesting \$2.5 million. The additional funding would include 16 additional positions. The General Counsel updated the Board on the status of cases in the regions and commended staff on their hard work. Ms. Torres-Guillén reiterated her desire to relocate the El Centro office to the Mecca area. Additionally, she would like the Board to assess her request to relocate the Visalia office to the Fresno area as soon as possible since the office is incredibly small and the General Counsel is hiring more staff. Ms. Torres-Guillén asked to be informed on who would be working on the Ace makewhole case to properly transition the matter to the Board.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – The General Counsel reported that drafts of a flier, worker piece, grower piece, and card are ready for review. An ad hoc committee will be formed to review the outreach material once it has been approved by the Labor and Workforce Development Agency. The General Counsel stated the materials should be available for distribution shortly after the beginning of year. Member Rivera-Hernandez thanked the General Counsel and Chair for their work on the project. The materials are much clearer and hopefully will encourage employers and workers to use the services of the department. The General Counsel thanked Administrative Assistant Garcia for her work on the graphics and design. Mr. Bedwell expressed appreciation for the development of new materials that could assist growers comply with the law.

- b. Annual Report – The current annual report will cover two years. The extensive increase in workload has slowed the progress of the report, but work continues as time permits
- c. Election Manual – Nothing new to report.
- d. Master Calendar – Executive Secretary Barbosa provided a status report on the calendar of upcoming projects.

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

Michael Cohen was recently named the new Department of Finance Director. To assist us in our Financial Integrity and State Managers Accountability Act (FISMA) reporting, the department has updated the Sample Internal Control Transmittal Letter to reflect this change in Directorship. The sample letter is available at the FISMA page at www.dof.ca.gov/osae/fisma/. The report is due December 31, 2013.

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 indicated to the Chair that there was nothing new to report on regulations.

8. Legislation – Board Counsel Robinson started her new position as General Counsel for the Native American Heritage Commission. The Chair thanked Ms. Robinson for her service to the Board. Before her departure, Ms. Robinson indicated there was nothing new to report on legislation.

Personnel – Progress on filling ALRB positions. The General Counsel announced that graduate legal assistants Susana Naranjo and Veronica Melendez Lopez passed the California bar exam and are now legal counsels in the Salinas Regional Office. The General Counsel hired John Cohen as a legal counsel in the Visalia Regional Office. Ms. Torres-Guillén will conduct training in Sacramento for the new attorneys. The General Counsel promoted both Cristina Pena and Stanley Marubayashi to Assistant General Counsel. Ms. Torres-Guillén also promoted Laura Camero to Legal Secretary in the Visalia office. The following positions are vacant: Legal Secretary-El Centro; Legal Counsel-El Centro; Senior Board Counsel-Sacramento; Attorney IV-Sacramento; and two Board Members-Sacramento. The General Counsel indicated she is always interested in limited term graduate legal assistants.

9. Roundtable

The next Board meeting is tentatively scheduled for January 15, 2014, at the EDD Auditorium, 722 Capitol Mall, Sacramento, CA.

Mr. Bedwell is working on an issue raised by AB 60, the bill granting driver's licenses to undocumented workers. There is a concern that employers could ascertain the undocumented status of a worker. The worker's status might be used to review complaints with renewed scrutiny, threaten deportation, or refuse to rehire the worker.

Member Bert Mason will be retiring at the end of December. The Chair thanked Member Mason for his service.

The public meeting adjourned at 10:26 a.m.