

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES WORKING MINUTES

**Employment Development Department Auditorium
722 Capitol Mall
Sacramento CA 95814**

June 30, 2016

Time: 10:00 a.m.
Members Present: Chairman Gould, Members Shiroma and Rivera-Hernandez
Staff Present: Executive Secretary Barbosa, Special Counsel Starkey; Board
Counsel Heyck and Ratshin; Special Legal Advisor Blanco;
Administrative Law Judge Soble; Analysts Cooper and Massie
Others Present: ALRB General Counsel Julia Montgomery, ALRB GC Analyst
Jillian Burgos; LWDA General Counsel Mark Woo-Sam; C. Bryan
Little, California Farm Bureau Federation; Megan Lane, Senate
Office of Research

OPEN SESSION

1. **Approval of Minutes:** Board approved 3-0 the minutes of December 3, 2015.
2. **Public Comment:** None at this time.
3. **Chairman's Report:**

Julia L. Montgomery appointed General Counsel of the Agricultural Labor Relations Board

On March 4, 2016, Governor Edmund G. Brown Jr. appointed Julia L. Montgomery to serve as General Counsel of the Agricultural Labor Relations Board. Ms. Montgomery worked at the Department of Fair Employment and Housing as Assistant Chief Counsel in 2015 and early 2016, and Senior Staff Counsel in 2013-2015. She was a managing attorney at the California Rural Legal Assistance Foundation, Inc. from 2002 to 2013. Ms. Montgomery taught a course titled "Farmworkers and the Law" as an adjunct professor at the University of California, Davis School of Law in 2006 and 2007. Ms. Montgomery was a directing attorney at California Rural Legal Assistance, Inc. in 2001-2002 and a staff attorney from 1996 through 2000. She earned a Juris Doctor degree from the University of California Davis, School of Law. The Chairman publicly welcomed Ms. Montgomery to the Agricultural Labor Relations Board. On behalf of the Board, he congratulated Ms. Montgomery on her

appointment as ALRB General Counsel and looks forward to working with her in the future.

The Chairman thanked LWDA General Counsel Mark Soo-Sam for serving as Acting ALRB General Counsel prior to Ms. Montgomery's appointment.

Senate Rules Approves Board Member Genevieve Shiroma, June 20, 2016

The Senate Rules Committee confirmation hearing for ALRB Board Member Genevieve Shiroma was held June 20, 2016, at 3:00 p.m. The Committee voted 3-2 to approve Ms. Shiroma's reappointment, which will now be taken up on the Senate floor. On behalf of the Board, I would like to congratulate Board Member Shiroma on the Senate Rules Committee vote and look forward to her ultimate confirmation before the full Senate.

Governor Signs Budget

On June 27, 2016, the Governor signed the state budget for fiscal year 2016-2017. The Governor's approved ALRB budget for fiscal year 2016-17 is \$9,615,000. This is a \$158,000 increase from the fiscal year 2015-16 approved budget of \$9,457,000. The Board program's 2016-17 budget is \$3,476,000 and the General Counsel program's budget is \$5,869,000.

Executive Secretary Issues Adjudication Timeline Memo

On April 12, 2016, our Executive Secretary J. Antonio Barbosa, issued an Adjudication Timeline Memo wherein the Executive Secretary outlined the use of a Case Management Conference, Bench Decisions from our Administrative Law Judges, Settlement Conferences, and Board Action on Exceptions (appeals) to ALJ decisions. Each of these measures is intended to expedite the processing of Unfair Labor Practice violations (ULPs) once the General Counsel has issued a complaint that ultimately will be scheduled for hearing before an ALJ. Copies of the Adjudication Timeline are available in the back. Mr. Barbosa is available after the meeting to answer any questions that you may have. Chairman Gould will continue to review and issue further guidelines to improve processes.

California Agriculture: Water, Labor, and Immigration at UC Davis Law School on Friday, April 15, 2016.

On Friday, April 15, 2016, a day-long conference was held at UC Davis Law School, titled "California Agriculture: Water, Labor, and Immigration," that examined how agriculture is adapting to more uncertain water supplies, fewer new farm workers, the likely impacts of changes to immigration policies, and labor law remedies for unauthorized workers. I chaired a panel on "Farm Labor in 2016." Board Member Genevieve Shiroma chaired a panel on "ALRB Issues in 2016." The conference was

supported by the UCD Ag Issues and Gifford Centers, the Giannini, Rosenberg, and WKF foundations, and the ALRB.

Chairman Tours Cannabis Fields in Sonoma County

In 2018 legislation will take effect. On May 26, 2016, at the invitation of the California Department of Food and Agriculture, Chairman William B. Gould IV and Special Legal Advisor Eduardo Blanco joined the California Department of Food and Agriculture and CA Growers Association on a Sonoma County Cannabis Tour. The tour consisted of site visits to the Walnut Greenhouse Cultivation Site and Circadian Manufacturing/Production Facility.

Litigation

In February of this year, the California Pacific Legal Foundation in *Cedar Point Nursery and Fowler Packing Co. v. Gould, et al.*, United States District Court, E.D. Cal., Case No. 1:16-cv-00185-LJO-BAM, sued the Board with regard to procedures allowing union organizers access to company worksites which procedures were established in 1975 and upheld by the California Supreme Court. The premise was to attack the federal constitutionality of the “*Pandol rule*” (*ALRB v. Superior Court (Pandol & Sons)* (1976) 16 Cal. 3d 392). Plaintiff’s motion was dismissed by Chief United States District Judge Lawrence J. O’Neill. A regulation providing worksite access to ALRB employees for the purpose of onsite worker education was adopted by the Board in December of last year (2015) and is pending before the Labor and Workforce Development Agency (LWDA). In a separate decision, Judge O’Neill dismissed the plaintiff’s case on June 29, 2016. The Court rejected the argument that ALRB access regulation would interfere with possessory rights of the affected growers but allowed fourteen (14) days for plaintiffs to put forth evidence to support their claim.

Special Counsel Reinstating to CalHR

Chairman Gould and Executive Secretary Barbosa thanked Special Counsel Paul Starkey for his invaluable service to the Board during his limited-term assignment and wished him well in his future endeavors.

4. Executive Officer’s Report on Elections, Unfair Labor Practice Complaints, Hearings and Court Litigation

ELECTION REPORT

Since the Board’s last meeting, there have been two (2) new notices of intent to take access (NAs), one (1) notice of intent to organize (NO) and three election petitions that have been filed with our regional offices.

NOTICE OF INTENT TO TAKE ACCESS (NA)

2016-NA-001-SAL April 18, 2016 Hiji Bros., Inc. & Seaview Growers, Inc.
2016-NA-001-VIS May 18, 2016 Klein Management, Inc. (UFW)

NOTICE OF INTENT TO ORGANIZE (NO)

2016-NO-001-VIS May 18, 2016 Klein Management, Inc. (UFW)

ELECTION PETITIONS FILED

December 28, 2015 Mushroom Farms, Inc., 2015-RD-001-SAL
April 14, 2016 Hiji Bros., Inc. & Seaview Growers, Inc., 2016-RD-001-SAL
May 18, 2016 Klein Management, Inc., 2016-RC-001-VIS

FOUR RESOLVED ELECTION MATTERS

Mushroom Farms, Inc., 2015-RD-001-SAL

On December 28, 2015, the Salinas Regional Office of the Agricultural Labor Relations Board (“ALRB” or “Board”) received a petition to decertify the United Farm Workers of America as the exclusive representative for agricultural workers at Mushroom Farms, Inc., in Watsonville, California. On December 12, 2015, the United Food & Commercial Workers, Local 5, filed a petition for intervention. The election was held on January 4, 2016 with the following results:

UFW (certified representative)	17
UFCW, Local 5 (intervenor)	50
No Union	3
Unresolved CBs	<u>0</u>
Total	70

Election objections, if any, were due within five days. As neither party filed objections to the election, the Executive Secretary issued a certification of representative on January 19, 2016. This matter is now fully resolved and will be removed from this report.

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

Pursuant to the Board’s administrative order dated September 19, 2014, and following a 105-day hearing, on September 17, 2016, the ALJ issued his 192-page decision as to certain election objections and unfair labor practice charges in the amended consolidated complaint. On April 15, 2016, the Board issued its decision affirming the ALJ’s conclusion that Gerawan’s unlawful and/or objectionable conduct tainted the entire decertification process, and adopting his recommended remedy of dismissing the decertification petition and setting aside the election.

Specifically, the Board affirmed the ALJ’s findings that Gerawan treated pro-decertification and pro-Union workers differently as to permitting signature gathering and allowed pro-decertification signature gatherers to miss work in a manner that would have adverse consequences for other workers. The Board affirmed the ALJ’s findings that Gerawan tacitly approved an unlawful work blockage, which, although instigated by the decertification petition supporters, directly facilitated the gathering of the signatures for the showing of interest. The Board also affirmed the ALJ’s findings that Gerawan unlawfully granted a wage increase during the decertification campaign and unlawfully solicited grievances.

The Board also found that Gerawan was liable for the violations committed by the Petitioner’s group during the work blockage and that there was worktime signature gathering in two additional crews beyond those found by the ALJ. With respect to the ALJ’s finding that the CFFA violated section 1155.4, the Board concluded this finding was beyond the scope of the ALJ’s authority as the CFFA is not a party to the instant case. However, the Board held Gerawan liable for the financial support and assistance provided by the CFFA to the decertification proponents in connection with a bus trip and protest in Sacramento. The Board found Gerawan colluded with the CFFA to make arrangements for the decertification petitioners to travel by bus to Sacramento to attend a protest in support of the decertification effort, and condoned the employees’ taking time off from work in violation of Labor Code section 1155.4.

Chairman Gould concurred with the majority and wrote separately to highlight both the fact that hundreds, if not thousands of cases, presenting the same legal issues over the past 81 years have come before both the National Labor Relations Board (NLRB) and this Board, and also to stress the standards established by the National Labor Relations Act’s (NLRA) principal architect, Senator Robert Wagner, and Gerawan’s breach of them.

Hiji Bros., Inc. and Seaview Growers, Inc., 2016-RD-001-SAL

On April 14, 2016, the Salinas Regional Office of the Agricultural Labor Relations Board (“ALRB” or “Board”) received a petition to decertify the United Food and Commercial workers (UFCW) as the exclusive representative for agricultural workers at Hiji Bros., Inc. and Seaview Growers, Inc., in Oxnard and Camarillo, California. On April 15, 2016, the UFW filed a petition for intervention. The election was held on April 20, 2016 with the following results:

UFW	111
UFCW	61
No Union	6
Unresolved CBs	<u>1</u>
Total	179

Election objections, if any, were due within five days. As neither party filed objections to the election, the Executive Secretary issued a certification of representative on April 29, 2016. This matter is now fully resolved and will be removed from this report.

Klein Management, Inc., 2016-RC-001-VIS

On May 18, 2016, the Visalia Regional Office of the Agricultural Labor Relations Board (“ALRB” or “Board”) received a petition for certification from the United Farm Workers of America seeking to represent the agricultural workers at Klein Management, Inc. in Kern County. The election was held on May 21, 2016 with the following results:

UFW	347
No Union	68
Unresolved Challenged Ballots	<u>10</u>
Total	425

Election objections, if any, were due within five days. As neither party filed objections to the election, the Executive Secretary issued a certification of representative on May 31, 2016. This matter is now fully resolved and will be removed from this report.

PENDING ELECTION MATTERS

None.

COMPLAINT REPORT

Since the Board’s last meeting, the General Counsel has issued six (6) complaints and settled nine (9) complaints prior to hearing.

COMPLAINTS ISSUED

Express Harvesting, Inc., 2014-CE-022-SAL

The General Counsel issued the complaint on December 22, 2015.

Ventura Terra Garden, Inc., 2015-CE-001-SAL and 2015-CE-002-SAL

The General Counsel issued the complaint on December 31, 2015.

Boavista Harvest, Inc., 2015-CE-011-SAL

The General Counsel issued the complaint on December 31, 2015.

Premiere Raspberries, LLC dba Dutra Farms, 2016-CE-010-SAL

The General Counsel issued the complaint on March 3, 2016.

T.T. Miyasaka, Inc., 2016-CE-011-SAL

The General Counsel issued the complaint on March 9, 2016.

Vasvision Berry Farms, LLC, 2015-CE-034-SAL

The General Counsel issued the complaint on April 1, 2016.

COMPLAINTS THAT HAVE SETTLED PRIOR TO HEARING

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

On December 21, 2015 the Board approved the parties' formal bilateral settlement agreement.

Express Harvesting, Inc., 2014-CE-022-SAL

On February 10, 2016, the parties reached an informal settlement agreement.

Associated Tagline, Inc. dba Ag Services, 2012-CE-006-SAL

On February 10, 2016, the parties reached an informal settlement agreement.

Monterey Mushrooms, Inc., 2013-CE-026-SAL

On February 16, 2016, the parties reached an informal settlement agreement.

United Farm Workers (Olvera), 2013-CL-002-SAL

On February 16, 2016, the parties reached an informal settlement agreement.

Ace Tomato Company, Inc., 2012-CE-007-VIS

On February 29, 2016 the parties reached an informal settlement agreement.

**Bud Antle, Inc. dba Bud of California, and Dole Fresh Vegetables, Inc.,
2012-CE-056-SAL**

On March 3, 2016, the parties reached an informal settlement agreement.

Ventura Terra Garden Inc., 2015-CE-001-SAL

On April 8, 2016, the parties reached an informal settlement agreement.

Vasvision Berry Farms, LLC, 2015-CE-034-SAL

On May 5, 2016, the parties reached an informal settlement agreement.

COMPLAINTS WITHDRAWN

Ace Tomato Company, Inc., 2012-CE-024-VIS

March 9, 2016, General Counsel withdrew complaint.

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

There are two hearings currently scheduled: one in August and one in November 2016.

Gerawan Farming, Inc., 2012-CE-041-VIS

Hearing: August 16, 2016 (30 days)

Gerawan Farming, Inc., 2015-CE-011-VIS & 2015-CE-012-VIS

Hearing: November 1, 2016

HEARINGS HELD

Premiere Raspberries, LLC dba Dutra Farms, 2016-CE-010-SAL

Hearing: May 3, 2016

T.T. Miyasaka Inc., 2016-CE-011-SAL

Hearing: May 4, 2016

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

Premiere Raspberries, LLC dba Dutra Farms, 2016-CE-010-SAL

Post-hearing briefs received June 6, 2016. ALJ decision is pending.

T.T. Miyasaka Inc., 2016-CE-011-SAL

Post-hearing briefs received June 6, 2016. ALJ decision is pending.

ALJ/IHE DECISIONS ISSUED

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

None.

CASES PENDING BOARD DECISION OR ACTION

Gerawan Farming, Inc., 2015-CE-011-VIS

Gerawan Farming, Inc.'s Application for Special Permission to Appeal the ALJ's Order Denying Gerawan's Petition to revoke Request 2 of the Acting General Counsel's subpoena duces tecum, dated April 1, 2016

Gerawan Farming, Inc., 2012-CE-041-VIS

General Counsel's Application for Special Permission to Appeal Executive Secretary's Orders dated June 21, 2016 and June 23, 2016

CASES REFERRED TO COMPLIANCE

None.

COMPLIANCE CASES CLOSED

None.

THE BOARD HAS ISSUED THREE BOARD DECISIONS and FOURTEEN ADMINISTRATIVE ORDERS

BOARD DECISIONS ISSUED

December 15, 2015	Ace Tomato Company, Inc.	41 ALRB No. 5
April 15, 2016	Gerawan Farming, Inc. (RD)	42 ALRB No. 1
April 28, 2016	Sabor Farms	42 ALRB No. 2

ADMINISTRATIVE ORDERS

Gerawan Farming, Inc., 2015-CE-011-VIS

Order Denying Application for Special Permission to Appeal Order Granting Petitions to Revoke Subpoenas; December 8, 2015
Admin. Order No. 2015-16

Sabor Farms, 2013-CE-047-SAL

Order Directing Respondent to Refile Exceptions in Compliance with Board Regulation 20282; December 9, 2015
Admin. Order No. 2015-17

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

Order Approving Bilateral Formal Settlement Agreement;
December 21, 2015
Admin. Order No. 2015-18

Gerawan Farming, Inc., 2015-CE-011-VIS

Order Denying Application for Special Permission to Appeal Order Granting Petitions to Revoke Subpoenas; December 22, 2015

Admin. Order No. 2015-19

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

Order Setting Time for Responses to Application for Special Permission to Appeal Executive Secretary's Order Denying Motion for Leave to File Report of Jerome Sapiro, Jr.; December 29, 2015

Admin. Order No. 2015-20

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

Order Denying Application for Special Permission to Appeal Executive Secretary's Order Denying Motion for Leave to File Report of Jerome Sapiro, Jr.; January 15, 2016; Admin. Order No. 2016-01

Boavista Harvest, Inc., 2015-CE-010-SAL

Order Setting Response Time on General Counsel's Request for Enforcement of Investigative Subpoenas, January 20, 2016

Admin. Order No. 2016-02

Boavista Harvest, Inc., 2015-CE-010-SAL

Order Granting the General Counsel's Request to Seek Court Order Enforcing Subpoenas Duces Tecum, February 1, 2016

Admin. Order No. 2016-03

Ace Tomato Company, Inc., et al., 93-CE-37-VI, et al.

Order Approving Bilateral Formal Settlement Agreement, February 26, 2016

Admin. Order No. 2016-04

Gerawan Farming, Inc., 2012-CE-041-VIS, et al.

Order Setting Time for Responses to Application for Special Permission to Appeal the Administrative Law Judge's Order Denying Respondent Gerawan's Request to Disqualify Administrative Law Judge, dated February 29, 2016; March 8, 2016

Admin. Order No. 2016-05

Gerawan Farming, Inc., 2012-CE-041-VIS, et al.

Order Denying Gerawan Farming Inc.'s Application for Special Permission to Appeal the ALJ's Order Denying Gerawan's Request to Disqualify ALJ Soble, dated February 29, 2016; March 17, 2016, Admin. Order No. 2016-06

Premiere Raspberries, LLC dba Dutra Farms, 2016-CE-010-SAL

Order Denying Respondent's Application for Special Permission to Appeal Executive Secretary's Order Dated April 6, 2016, April 27, 2016 Admin. Order No. 2016-07

T. T. Miyasaka, Inc., 2016-CE-011-SAL

Order Denying Respondent's Application for Special Permission to Appeal Executive Secretary's Order Dated April 6, 2016, April 27, 2016 Admin. Order No. 2016-08

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

Order Denying Petitioner Sylvia Lopez's Petition for Reconsideration of Decision and Order 42 ALRB No. 1; May 3, 2016; Admin. Order No. 2016-09

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW

None.

ALRB BOARD LITIGATION

United States Supreme Court

California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms, [No. 15-1272](#); California Supreme Court Case No. [S230890](#) ;Case No. [E063489](#) (4th DCA) 41 ALRB No. 2

Summary: Petition for writ of review of Board's decision finding that employer unlawfully disciplined several agricultural employees for engaging in protected concerted activity, namely leaving the job site because of weather-related unsafe working conditions, and retaliatory discharge of one of the workers who engaged in the protected work stoppage.

Status and Last Action Date: The Employer filed a petition for review in the California Supreme Court on December 1, 2015, which the Court dismissed on January 13, 2016. The Employer then filed a writ for review in the United States Supreme Court on April 12, 2016. On June 13, 2016, the Court denied the petition.

P & M Vanderpoel Dairy, [No. 15-1322](#); California Supreme Court Case No. [S230401](#); Case No. F070149 (5th DCA)
40 ALRB No. 8

Summary: Petition for writ of review of Board's decision finding that employer unlawfully fired dairy workers for protected concerted activity (requesting pay raise).

Status and Last Action Date: Employer filed a petition for review in the California Supreme Court on November 19, 2015, which the Court dismissed on January 27, 2016. Employer filed a petition for writ of certiorari on April 26, 2016. On June 13, 2016, the Court denied the petition.

Federal Appeals Court

► *Lopez v. Shiroma, et al.*, United States Court of Appeals, Ninth Circuit, Case No. 14-16640, United States District Court, E.D. Cal., Case No. 1:14-CV-00236-LJO-GSA

Summary: 42 United States Code section 1983 action for alleged civil rights violations arising out of representation election. Board's appeal from district court ruling on ALRB's motion to dismiss that denied ALRB's immunity defenses in a 42 United States Code section 1983 action for alleged civil rights violations arising out of representation election.

Status and Last Action Date: The appeal is fully briefed and is scheduled to be heard on August 12, 2016.

Federal District Court

► *Cedar Point Nursery and Fowler Packing Co. v. Gould, et al.*, United States District Court, E.D. Cal., Case No. 1:16-cv-00185-LJO-BAM

Summary: Filed February 16, 2016, the complaint for injunctive and declaratory relief, seeks an order to overturn the ALRB's 40-year-old access regulation on federal constitutional grounds. (Cal. Code Regs., tit. 8, § 20900, subd. (e).) The action names, as public officials, Chairman William B. Gould IV, Board Members Genevieve Shiroma and Cathryn Rivera-Hernandez, and Executive Secretary J. Antonio Barbosa.

Status and Last Action Date: Preliminary injunctive relief was denied on May 26, 2016. The Board filed its motion to dismiss on April 7, 2016, which the court granted on June 29, 2016. The plaintiffs have until July 14, 2016, to file an amended complaint.

California Supreme Court

► *Gerawan Farming, Inc. v. ALRB*, California Supreme Court Case No. [S227243](#)

Case No. [F068526](#) (5th DCA); 39 ALRB No. 17 (2013)

Summary: Various statutory and constitutional challenges to Board's Decision in 39 ALRB No. 17, where the Board approved an MMC contract between the Employer and the Union. On May 14, 2015, the court issued a published decision reversing the Board and finding the MMC unconstitutional and an improper delegation of statutory authority.

Status and Last Action Date: On June 22, 2015, the Employer, the ALRB and the UFW filed separate petitions for review. On August 19, 2015, the Supreme Court granted review. On April 26, 2016, briefing by the parties was completed. On May 23, 2016, with leave of the court, amici employer groups filed an amicus brief. Silvia Lopez filed an amicus brief on June 8, 2016. The Board's answer to the amicus briefs is due on July 8, 2016.

► *Tri-Fanucchi Farms, Fifth District Court of Appeal*, Case No. [S227270](#)
Case No. [F069419](#) ; 40 ALRB No. 4 (2014)

Summary: Petition for review of published decision partially upholding writ of review of Board's decision and order in 40 ALRB No. 4. On May 14, 2015, in a published decision, the court upheld the Board's decision not allowing the Employer's abandonment defense, but set aside the Board's ruling as to the remedy, finding no liability for the Employer, reasoning that because no appellate decision had ruled on the defense raised, the Employer's assertion of the defense in this case promoted the Act.

Status and Last Action Date: The Board and the Employer filed separate petitions for review in the California Supreme Court, respectively, on June 22 and June 23, 2015. On August 19, 2015, the Supreme Court granted review. Briefing by the parties was completed on March 15, 2016. The matter is pending setting of oral argument.

California Appellate Courts

Third District Court of Appeal

► *ALRB v. Superior Court (Gerawan Farming)*, Third District Court of Appeal No., Case No. [C081373](#)
Sacramento County Superior Court, Case No. 34-2015-80002100

Summary: Petitioner Board seeks review and stay of January 2016 Sacramento County superior court judgment granting Public Records Act request for privileged Board documents relating to a request for injunctive relief in May 2015.

Status and Last Action Date: The petition and request for stay was filed with the court of appeal on February 24, 2016. The court issued a stay on February 26, 2016. After briefing, on March 24, 2016, the court issued an order to show cause to the superior court and the Gerawan why the relief sought by the ALRB should not be granted. The matter has been briefed and is awaiting setting of hearing.

Fifth District Court of Appeal

► *Ace Tomato Company, Inc.*, Fifth District Court of Appeal, Case No. F065589 (38 ALRB No. 6)

Summary: The Employer seeks review and stay of the Board's final order in a Mandatory Mediation and Conciliation ("MMC") case involving Ace and the United Farm Workers of America (the "UFW"). The Board's order affirmed the mediator's report fixing the terms of a collective bargaining agreement between the employer and the union.

Status and Last Action Date: The matter settled, and on March 29, 2016, the Fifth District Court of Appeal granted the Employer's request to voluntarily dismiss the action.

► *Gerawan Farming, Inc. v. ALRB, et al.*, Fifth District Court of Appeal, Case No. F069896, Fresno County Superior Court, Case No. 13-CECG-03374

Summary: Gerawan challenges the Board's August 21, 2013 order that MMC proceedings are closed to the public. Gerawan brings this direct appeal from the superior court order granting the Board's demurrer to Gerawan's complaint for declaratory and injunctive relief. The lower court ruled it had no jurisdiction to hear the case.

Status and Last Action Date: On January 8, 2016, the court granted Gerawan's motion to consolidate appeals (F069896 & F070287) for oral argument and decision. The Court then requested further briefing about how to proceed with

the consolidated action. After hearing on April 20, 2016, the Court on May 9, 2016, issued a published opinion, striking down Labor Code section 1164.9 as unconstitutional and remanding the matter back to the superior court for further proceedings. The matter was not appealed. The court has set July 11, 2016, to return the matter to the superior court.

► ***Lupe Garcia v. California Agricultural Labor Rel. Bd., et al., Fifth District Court of Appeal, Case No. F070287, Fresno County Superior Court, Case No. 13-CECG-03374***

Summary: Appeal of Denial of Petition for Writ of Mandate challenging the Board's April 16, 2013 order in 2013-MMC-003 (39 ALRB No. 5) (constitutionality of MMC) (Gerawan employees challenge).

Status and Last Action Date: Described above, Case No. F069896

► ***Arnaudo Brothers, LP, and Arnaudo Brothers, Inc. ("Arnaudo") v. ALRB, et al., Fifth District Court of Appeal, Case No. F072420 (40 ALRB No. 3, 41 ALRB No. 6.)***

Summary: Petition for writ of review of Board's decision ordering makewhole for the Employer's failure to provide information and failure to bargain in good faith.

Status and Last Action Date: On September 30, 2015, the Employer filed its petition for review. Petitioner's opening brief was filed February 1, 2016. The Board's brief was filed May 9, 2016. Petitioner's reply brief is due July 11, 2016.

► ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. [F073720](#) 42 ALRB No. 1***

Summary: Petition for writ of review of Board's decisions and orders in 40 ALRB No. 1, finding the employer committed unfair labor practices and nullifying the decertification election.

Status and Last Action Date: On May 16, 2016, the Employer filed its petition for review. On May 19, 2016, the Court granted the Office of the Executive Secretary request for an extension of time until July 11, 2016, to file the certified record. The court granted a second extension of time to August 10, 2016. Petitioner's opening brief is due 35 days after the filing of the administrative record.

► ***Lopez v. ALRB, Fifth District Court of Appeal, Case No. [F073730](#)***
42 ALRB No. 1 and 39 ALRB No. 20

Summary: Petition for writ of mandamus of Board's decisions in 42 ALRB No. 1 and 39 ALRB No. 20, finding unfair labor practices by the Employer and nullifying the November 2013 election. The petition alleges various procedural and constitutional violations.

Status and Last Action Date: On May 17, 2016, Lopez filed her petition for review. After briefing by the parties, the court on June 21, 2016, requested additional briefing. The Board's response is due on July 26, 2016.

► ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. [F073769](#)***
42 ALRB No. 1

Summary: Petition for writ of mandamus of Board's decision in 42 ALRB No. 1, finding unfair labor practices by the Employer and nullifying the November 2013 election. The petition, a companion petition to the Lopez writ (F073730), alleges various procedural and constitutional violations.

Status and Last Action Date: On May 23, 2016, Gerawan filed its petition for review. After briefing by the parties, the court on June 21, 2016, requested additional briefing. The Board's response is due on July 26, 2016.

Sixth District Court of Appeal

► ***United Farm Workers (Corralitos Farms, LLC), Sixth District Court of Appeal, Case No. H041113 (40 ALRB No. 6)***

Summary: Petition for writ of review of Board's decision finding union unlawfully picketed for representative status.

Status and Last Action Date: The case is fully briefed. The matter remains stayed by a bankruptcy order, July 24, 2015.

► ***Kawahara Nurseries, Inc., Sixth District Court of Appeal, Case No. H041686 (40 ALRB No. 11)***

Summary: Petition for writ of review of Board's decision finding that employer unlawfully laid off employees based on their union activity and refused to rehire workers based on their union activity and for having given testimony in an ALRB proceeding.

Status and Last Action Date: Briefing was completed on May 18, 2015. On June 17, 2016, the court summarily denied the petition. No appeal has been taken and the matter will be referred to compliance.

► ***Sabor Farms, LLC v. ALRB., Sixth District Court of Appeal, Case No. [H043618](#)***
42 ALRB No. 2

Summary: Petition for writ of review of the Board's decision finding that employer unlawfully laid off two employees based on their protected, concerted activity.

Status and Last Action Date: On May 27, 2016, the Employer filed its petition for review of the Board's decision in 42 ALRB No. 2. On June 10, 2016, the Board filed the certified record. Petitioner's opening brief is due July 15, 2016.

California Superior Courts

► ***Francisco Aceron v. ALRB, Sacramento County Superior Court, Case No. 34-2014-00168939***

Summary: Francisco Aceron, an ALRB employee with the Office of the General Counsel, filed a Complaint for Discrimination and Harassment arising out of employment.

Status and Last Action Date: Plaintiff's counsel voluntarily filed an amended complaint on December 16, 2014. Defendants' answer was filed on January 15, 2015. The case settled in June 2016.

► ***Pauline Alvarez v. ALRB, Sacramento County Superior Court, Case No. 34-2015-00185535***

Summary: Pauline Alvarez, an ALRB employee with the Office of the General Counsel, filed a Complaint for Discrimination and Harassment arising out of employment.

Status and Last Action Date: The ALRB answered by general denial on January 22, 2016. The matter is in discovery.

► ***Lupe Garcia v. California Agricultural Labor Rel. Bd., et al., Fresno County Superior Court, Case No. 13-CECG-01557 (39 ALRB No. 5) (2013-MMC-003)***

Summary: Petition for Writ of Mandate challenging the Board's April 16, 2013 order in 2013-MMC-003 (39 ALRB No. 5) (constitutionality of MMC) (Gerawan employees challenge).

Status and Last Action Date: Board's Counsel filed papers to stay all proceedings, including discovery, which the court granted on September 24, 2014, and dates for pretrial conferences and trial on November 2014 have been vacated.

► ***Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et. al., Fresno County Superior Court, Case No. 16-CECG-00411***
Gerawan v. UFW (Marquez) 2015-CE-011-VIS
Filing Date: February 9, 2016

Summary: On February 9, 2016, the Employer filed a petition for writ of mandate seeking an order 1) directing the Board to vacate the ALJ order dated November 24, 2015 revoking the subpoenas served on the Board and General Counsel [documents sought concern the TRO proceeding in the Marquez unfair labor practice, 2015-CE-0011-VIS]; 2) require the Board to comply with the subpoena; 3) direct the Board to order the General Counsel to comply with the subpoena.

Status and Last Action Date: The Board was served with the petition for writ of mandate on February 18, 2016. The Board filed its demurrer on March 21, 2016. On June 1, 2016, the court adopted its tentative ruling, dismissing the case without leave to amend. A draft order for judgment was filed with the court on June 10, 2016.

5. GENERAL COUNSEL'S REPORT:

General Counsel Montgomery thanked the Chairman and Board members for their welcome. She has been evaluating the General Counsel program over the past few months. There has been a lot of activity, which Mr. Barbosa reported, including 2 elections. Ms. Montgomery thanked the Director of the Department of Industrial Relations, Christine Baker, who lent staff to the ALRB to assist in conducting an election in McFarland. Ms. Montgomery conducted 2 attorney training sessions that included presentations by former ALRB General Counsel Michael Lee, LWDA General Counsel Mark Woo-Sam, ALRB Board Member Cathryn Rivera-Hernandez, Retired Annuitant Eduardo Blanco and ALRB ALJ Thomas Sobel and former ALJ Robert Dresser. Ms. Montgomery will continue to provide training to staff. There are 144 charges pending investigation as well as two hearings on calendar. Currently the General Counsel's office has several vacancies including seven attorneys, five field examiners, three staff services analysts, and three secretaries. Additionally, one attorney and one field examiner are on leave. Ms. Montgomery is in the process of filling those vacancies.

The General Counsel staff have conducted 12 outreach events this year. Ms. Montgomery is seeking additional outreach opportunities including collaborating with other agencies.

Two new offices will be opening this year. One in Santa Rosa and one in Indio. The Santa Rosa office will be staffed with existing employees until permanent staff is

hired. The Indio office is scheduled to open in the Fall. Ms. Montgomery has interviewed candidates and is looking to hire an attorney to work remotely before the Indio office opens.

The General Counsel's office has achieved settlement of several complaints prior to hearing.

Ms. Montgomery's priorities include meeting all obligations in the cases, filling vacancies and improving operations. She is reviewing policies, procedures and timelines to evaluate what changes and revisions are needed.

6. CHIEF OF ADMINISTRATION REPORT

The Chief of Administration was unable to attend the meeting due to the press of business.

7. REGULATIONS

- a) *Status and update on E-Filing Regulations* – On May 6, 2016, the formal rulemaking process was initiated with the publication of the Notice of Proposed Regulatory Action in the Notice Register. Pursuant to the Notice, the written comment period ended on June 20, 2016. The United Farm Workers of America (UFW) submitted on written comment prior to the June 20 deadline. No other written comments were received. No public hearing was scheduled.

The UFW suggests that a section be added to proposed section 20169 to allow more than one email address (up to five total email addresses) to be provided by each party for electronic service of documents. The concern is that an electronic service to a single email address could be inadvertently overlooked, misfiled or deleted. Board staff reviewed the comment, and has added new section (C) to proposed section 20169. The proposed regulation with the new section has been sent out for a 15-day public comment period. Comments must be received at ALRB headquarters by 5:00 p.m. on July 11, 2016.

- b) *Status and update on Consolidation Regulations* – On April 8, 2016, the formal rulemaking process was initiated with the publication of the Notice of Proposed Regulatory Action in the Notice Register. Pursuant to a Notice of Extension, the written comment period ended on June 10, 2016. No written comments were received. No public hearing was scheduled. Upon completion of a cost analysis by Department of Finance, the regulation will move forward through the Office of Administrative Law.

8. LEGISLATION

Nothing new to report.

9. PERSONNEL

Nothing new to report.

10. ANNOUNCEMENTS

None.

The public meeting adjourned at 10:54 a.m.