

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 28, 2017

Time: 10:03 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Executive Secretary Avila-Gomez, Board Counsel Heyck, Inciardi and Ratshin; Special Legal Advisor Blanco; Analysts Diaz and Massie
Others Present: ALRB: General Counsel Montgomery; Assistant General Counsel Shawver; Division of Administrative Services Chief Rodrigues; LWDA: General Counsel Woo-Sam

OPEN SESSION

- 1. Approval of Minutes:** Board approved 3-0 the minutes of September 14, 2017.
- 2. Public Comment:** None.
- 3. Chairwoman's Report:**

On September 26, 2017, Chairwoman Shiroma, General Counsel Montgomery, Executive Secretary Avila-Gomez, Regional Director Herrera, and Santa Rosa ALRB staff hosted an open house at the Santa Rosa office with the purpose of meeting and speaking with members of the agricultural community. The open house was well attended. There were representatives from Employment Development Department Workforce Services, non-profits, the Press Democrat, La Prensa Sonoma Spanish-language newspaper, Univision, and employer attorneys. The office itself is co-located with the Employment Development Department's workforce investment and disability insurance units with a spacious lobby and conference rooms to share.

On September 27, 2017, the group attended an agricultural operations tour with Gallo Sonoma. They were informed during the tour that there is a lot of competition for agricultural workers including competition from cannabis grows.

Following the meeting with Gallo Sonoma, the group met with Arturo Gonzalez, EDD Workforce Services in Healdsburg and toured three Napa-county run farmworker housing complexes. The housing complexes are for men only but there is an effort to provide for women (Napa is seeing more women working in the fields) and families.

On Friday October 13, 2017, Chairwoman Shiroma, Board Member Rivera-Hernandez, Executive Secretary Avila-Gomez, and General Counsel Montgomery attended a California Farm Labor Seminar facilitated by Phil Martin, professor emeritus UC Davis at the California Farm Bureau's offices.

This seminar reviewed new data on farm workers and their earnings (both increased), trends in the H-2A program (numbers, commodities, areas), and farm labor contractors. The National Agricultural Workers Survey found that almost 40 percent of California crop workers were employed by a farm labor contractor (FLC) in 2015-2016, and most FLC employees had only one employer during the year.

Speakers included representatives from the Department of Housing and Community Development, the Department of Labor, and the Department of Homeland Security Immigration and Customs Enforcement audit group.

On November 27, 2017, the California Supreme Court issued two decisions ruling with the Board's arguments about the constitutionality of the Mandatory Mediation and Conciliation (MMC) law, rejecting an abandonment defense, and upholding the Board's broad remedial authority under the statute.

On November 30, 2017, Chairwoman Shiroma, Board Member Hall, Executive Secretary Avila-Gomez, General Counsel Montgomery, Regional Director Schneider, and staff will host a reception at the Indio satellite office. The group will then travel to El Centro and Calexico for the annual Farmworker appreciation breakfast starting at midnight and into early Friday morning. Last year approximately 3,000 farmworkers participated. The event is sponsored by the Employment Development Department and various local organizations and agencies. The idea for the breakfast began in 1979 with simple coffee and sweet bread and has been growing ever since.

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

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Since the Board's last meeting on September 14, 2017, there has been one new notice of intent to take access filed. The notice was filed on October 5, 2017, by the General Teamsters Union, Local 890, to access all dairy farms in Tulare County owned by Gerben Leyendekker Dairies where employees engage in agricultural employment.

NOTICE OF INTENT TO ORGANIZE (NO)

Since the Board's last meeting on September 14, 2017, there has been one new notice of intent to organize. The notice was filed on October 5, 2017, by the General Teamsters Union, Local 890, to organize all Gerben Leyendekker Dairies' agricultural employees employed in Tulare County.

ELECTION PETITIONS FILED

Since the Board's last meeting on September 14, 2017, there have been no elections held, however, one election—Premiere Raspberries, LLC, 2017-RC-004-SAL—held on August 9, 2017, remains pending before the Board.

By way of background, on August 9, 2017, Premiere Raspberries' employees elected the United Farm Workers of America to represent Premiere Raspberries' agricultural workers in Monterey and Santa Cruz Counties. The employer filed four election objections on August 14, 2017, which the Board dismissed in a decision issued on October 10, 2017. The employer then filed a motion for reconsideration of the Board's decision on October 20, 2017—which is currently pending before the Board.

COMPLAINT REPORT

Since the Board's last meeting on September 14, 2017, there have been no complaints issued.

HEARINGS SCHEDULED

Since the Board's last meeting on September 14, 2017, through today, November 28, 2017, there were 26 case-related conferences and hearings scheduled, 7 in September, 12 in October, and 7 in November. Currently there are three scheduled for December.

COMPLAINTS SETTLED PRIOR TO HEARING

- **Growers Express, LLC, 2015-CE-035-SAL:** On September 25, 2017, the parties executed an Informal Bilateral Settlement Agreement in this matter and the scheduled hearing taken off calendar.
- **Del Carlo Farms, 2016-CE-011-VIS:** On September 25, 2017, the parties executed an Informal Bilateral Settlement Agreement in this matter and the scheduled hearing taken off calendar.
- **Scoto Brothers Farming, 2016-CE-015-VIS:** On October 23, 2017, the parties executed an Informal Bilateral Settlement Agreement in this matter and the scheduled hearing taken off calendar.
- **Rawah Vineyards, 2016-CE-045-SAL:** On November 3, 2017, the parties executed an Informal Bilateral Settlement Agreement in this matter and the scheduled hearing taken off calendar.
- **Robert Johnson Farms, Inc., 2015-CE-044-VIS:** On October 30, 2017, the parties executed an informal settlement agreement and the scheduled hearing taken off calendar.

COMPLAINTS WITHDRAWN

On September 27, 2017, the General Counsel withdrew the complaint in Airdrome Orchards, Inc. 2016-CE-002-VIS.

HEARINGS IN PROGRESS

None.

CASE MANAGEMENT CONFERENCES, PREHEARING CONFERENCES, SETTLEMENT CONFERENCES HELD

Fifteen case management conferences, prehearing conferences, settlement conferences and hearings were held since the last meeting.

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

- **United Farm Workers (Angel Lopez), 2015-CL-006-VIS:** Hearing ended April 4, 2017. Post-hearing briefs received May 11, 2017.

- **P & M Vanderpoel Dairy (Joel Noel Castellon Martinez) 2013-CE-016-VIS:** Hearing ended October 31, 2017. Post-hearing briefs due November 28, 2017.

ALJ/IHE DECISIONS ISSUED

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

None.

CASES PENDING BOARD DECISION OR ACTION

- **Gerawan Farming, Inc., Case Nos. 2012-CE-041-VIS, et al.;** Exceptions received 5/25; Replies received 6/12.
- **United Farm Workers (Olvera/Magaña), Case Nos. 2013-CL-003-SAL, et al.;** Exceptions due 8/31; Replies due 9/14.
- **Premiere Raspberries, LLC, Case No. 2017-RC-004-SAL;** Exceptions due 11/28.

CASES REFERRED TO COMPLIANCE

- **P&M Vanderpoel Dairy, 2013-CE-016-VIS, 40 ALRB No. 8**
On July 12, 2017, the General Counsel submitted a request to the Board for consideration of a Formal Bilateral Partial Settlement Agreement. The agreement covers providing backpay to four of the five involved agricultural workers. A hearing was held on October 31, 2017, addressing the backpay for the fifth worker. Exceptions are due on November 28, 2017.

THE BOARD HAS ISSUED ONE NEW BOARD DECISION and HAS ISSUED EIGHT ADMINISTRATIVE ORDERS

BOARD DECISIONS ISSUED

- **Premiere Raspberries, LLC, 2017-RC-004-SAL**
42 ALRB No. 2; Board decision issued October 10, 2017

ADMINISTRATIVE ORDERS

- **Sabor Farms, 2013-CE-047-SAL (42 ALRB No. 2)**
On September 19, 2017, the Board issued Administrative Order 2017-12 granting General Counsel's request to stay a request for enforcement of a Board order.
- **California Artichoke and Vegetable Corporation dba Ocean Mist Farms, 2013-CE-044-VIS/2013-CE-012-VIS (41 ALRB No. 2)**
On October 17, 2017, the Board issued Administrative Order 2017-13 granting the Regional Director's Motion to Stay Request for Leave to Seek Court Order Requiring Compliance with Board Order.
- **California Artichoke and Vegetable Corporation dba Ocean Mist Farms, 2013-CE-044-VIS/2013-CE-012-VIS (41 ALRB No. 2)**
On October 17, 2017, the Board issued Administrative Order 2017-14 denying approval of a proposed bilateral, formal and partial settlement agreement without prejudice.
- **Premiere Raspberries, LLC, 2017-RC-004-SAL**
On October 27, 2017, the Board issued Administrative Order 2017-15 requesting and setting forth time for response to employer's motion for reconsideration of decision and order, and stay of certification of representative.
- **California Artichoke and Vegetable Corporation dba Ocean Mist Farms, 2013-CE-044-VIS/2013-CE-012-VIS (41 ALRB No. 2)**
On November 1, 2017, the Board issued Administrative Order 2017-16 approving the bilateral, formal and partial settlement agreement.
- **Spawn Mate, Inc. dba Mushroom Farms, a California Corporation, 2016-MMC-01**
On November 8, 2017, the Board issued Administrative Order 2017-17 remanding the mediator's report and dismissing petitions for review without prejudice.
- **Premiere Raspberries, LLC, 2017-RC-004-SAL**
On November 8, 2017, the Board issued Administrative Order 2017-18 granting the United Farm Workers' request for extension of time to file reply to Premiere Raspberries, LLC's motion for reconsideration.

- **California Artichoke and Vegetable Corporation dba Ocean Mist Farms, 2013-CE-044-VIS/2013-CE-012-VIS (41 ALRB No. 2)**

On November 1, 2017, the Board issued Administrative Order 2017-19 staying the Regional Director's request for leave to seek a court order requiring compliance with the Board's order.

MANDATORY MEDIATION AND CONCILIATION

- **Mushroom Farms, Inc., 2016-MMC-001**

On August 9, 2016, The United Food and Commercial Workers, Local 5 (UFCW), filed a petition seeking a referral to Mandatory Mediation and Conciliation (MMC) on August 9, 2016. On August 17, 2016, the Board issued a decision and order directing the Employer and UFCW to mandatory mediation and conciliation (MMC). The parties selected Matt Goldberg as the mediator and met for mediation on December 13, 2016. The parties were scheduled to meet again on January 20, 2016, for their second session. In the interim, the parties agreed to investigate and collect additional data necessary to mediate contract articles that remain in dispute.

The parties met for the first day of mandatory mediation on December 13, 2016, and, after postponement due to a health issue, met again on April 4, 2016. The parties met for a final time on May 8, 2017, and submitted closing briefs to the mediator.

On October 24, 2017, the Mediator filed a report ("Report") with the Board pursuant to Labor Code section 1164, subdivision (d). Mushroom Farms and the UFCW both filed petitions for review of the Report pursuant to Labor Code section 1164.3, subdivision (a). On November 8, 2017, the Board remanded the mediator's report and dismissed the petitions for review without prejudice.

On November 18, 2017, the mediator issued his Supplemental Report to the Board.

ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

► *Tri-Fanucchi Farms v. ALRB*, California Supreme Court Case No. S227270

Summary: Petitions for review of the Fifth District Court of Appeal's decision affirming in part and reversing in part the Board's decision and order in 40 ALRB No. 4, in which the Board rejected the employer's defense to a refusal to bargain charge that the union had "abandoned" the bargaining unit and awarded bargaining make-whole relief to the employees.

Status: The California Supreme Court issued its opinion on Monday, November 27. The Court affirmed the portion of the appellate court's opinion upholding the Board's rejection of the employer's union "abandonment" defense, and reversed the portion of the appellate court's opinion reversing the Board's remedial bargaining make-whole award. The decision will become final after 30 days, on December 27.

► *Arnaudo Brothers v. ALRB*, Fifth District Court of Appeal, Case No. F072420

Summary: Petition for writ of review of the Board's decisions in 40 ALRB No. 3 and 41 ALRB No. 6, in which the Board found Arnaudo unlawfully failed and refused to bargain with the United Farm Workers and awarded bargaining make-whole relief.

Status: The parties filed cross-petitions in the California Supreme Court for review of the Fifth Appellate District's opinion. Arnaudo filed its petition on September 14 seeking review of the portion of the appellate court's opinion rejecting its defense that the United Farm Workers of America had disclaimed interest in representing its employees. The Board filed its petition for review on September 18 seeking review of the appellate court's reversal of the Board's issuance of a bargaining make-whole remedy. On October 25, the California Supreme Court issued an order granting the Board's petition for review and denying Arnaudo's petition for review. The Court also ordered further proceedings in the case stayed pending further order of the Court and its decision in the Tri-Fanucchi case. No further orders have issued in this case as of yet.

Mandatory Mediation and Conciliation Litigation

► ***Gerawan Farming, Inc. v. ALRB*, California Supreme Court Case No. S227243**

Summary: Petition for review of the Fifth District Court of Appeal’s opinion holding the mandatory mediation and conciliation statute (Lab. Code, § 1164 et seq.) unconstitutional as violative of equal protection and an improper delegation of legislative authority. The appellate court also held the employer should have been permitted to assert as a defense to referral to MMC that the union “abandoned” the bargaining unit.

Status: The California Supreme Court issued its opinion on Monday, November 27. The Court reversed the appellate court’s opinion, and concluded that the MMC statute does not violate substantive due process, equal protection, or constitute an unconstitutional delegation of legislative power. The Court also found that an employer cannot assert a defense of union “abandonment” in resisting a referral to MMC. The decision will become final after 30 days, on December 27. After the decision becomes final, supplemental opening briefs may be filed by the parties in the appellate court within 15 days, and then supplemental responsive briefs within 15 days of the filing of any opening briefs. The deadline for Gerawan to file a Petition for Writ of Certiorari in the United States Supreme Court is February 25, 2018.

► ***Gerawan Farming, Inc. v. ALRB, et al.*, Fifth District Court of Appeal, Case No. F07148**

Summary: Appeal from superior court order granting summary judgment in favor of the Board after rejecting Gerawan’s claims that the Board’s decision in 39 ALRB No. 13 denying Garcia’s petition to intervene in MMC proceedings between Gerawan and Garcia unconstitutionally denies public access to MMC proceedings.

Status: On September 15, the court issued an order granting the parties’ stipulation to consolidate the separate appeals filed by Gerawan Farming and its employee, Lupe Garcia. The parties also filed on September 15 a stipulation to use a joint appendix as the written record on appeal, which will be filed by Gerawan at the time it files its opening brief. At this time the parties are awaiting preparation of the court reporter’s transcripts of the oral proceedings in the superior court. Gerawan’s and Garcia’s opening brief will be due 40 days after the court reporter’s transcript is filed with the appellate court. The Board’s respondent’s brief would then be due 30 days after the filing of the opening brief, and then any reply brief would be due 20 days after that.

Other Board Litigation

- ▶ ***Cedar Point Nursery and Fowler Packing Co. v. Gould, et al.*, U.S. Court of Appeals, Ninth Circuit, Case No. 16-16321**

Summary: Complaint for injunctive and declaratory relief seeking an order to overturn the Board's access regulation (Cal. Code Regs., tit. 8, § 20900) on constitutional grounds under the Fourth and Fifth Amendments. Plaintiffs appeal from the district court's order dismissing their constitutional claims.

Status: The court heard oral arguments on November 17, and the parties are now awaiting issuance of an opinion.

- ▶ ***Gerawan Farming, Inc. v. ALRB*, Fifth District Court of Appeal, Case No. F074423**

Summary: Petition for writ of mandate to compel Board to reverse an administrative law judge's ruling revoking subpoenas served by Gerawan in an unfair labor practice proceeding. Gerawan appeals the superior court's judgment dismissing the case after sustaining a demurrer filed by the Board without leave to amend.

Status: Gerawan filed its opening brief on July 24. Pursuant to a stipulated briefing schedule, the Board filed its respondent's brief on October 23. Gerawan's reply brief is due December 13.

- ▶ ***Alvarez v. ALRB, et al.*, Sacramento County Superior Court, Case No. 34-2015-00185535**

Summary: Complaint for discrimination and harassment arising out of employment.

Status: A request for dismissal was filed on October 16, and the dismissal was entered by the clerk that same day. This litigation is now complete.

5. General Counsel's Report

General Counsel Montgomery reported that since the last Board meeting 20 charges have been filed – 15 in the Salinas region and 5 in the Visalia region.

Twelve settlements have been executed since the beginning of the fiscal year.

- Ocean Mist compliance: A worker complained about working in the rain without proper equipment; the charge involved retaliatory discipline and refusal to rehire. The matter was settled during hearing for \$50,000 to the charging party.
- Scoto Brothers ULP: The case involved a refusal to rehire after an employee circulated pro-union literature. A post-complaint settlement was achieved for \$6,370, reinstatement and noticing.
- Maricopa Orchards: A worker was terminated after complaining about how employees' wages were calculated. A pre-complaint settlement was achieved for \$840 plus reinstatement and noticing.
- South County Packing: A worker alleged he was terminated after he complained about wage calculations and untimely meal periods, and then discussed labor rights with his co-workers. A post-complaint settlement was achieved for \$3,532 and noticing.
- Del Carlo Farms: A worker was beaten by a foreman with the owner present and fired after he complained with co-workers of mistreatment at work. A post-complaint settlement was reached for \$10,000 backpay to the worker and noticing.
- Grower's Express LLC: Charging party and workers, complaining of heat and not feeling well, left the work site. They were disciplined for leaving work early. Workers also alleged the company pressured them to withdraw their unfair labor practice charge. The company previously reimbursed the workers so no monetary remedy. The settlement involved noticing of employees.
- Reiter Berry Farms: An employee not rehired after filing a wage and hour class action against employer. A settlement was achieved pre-complaint for \$1,972 plus noticing.
- Channel Islands: A worker was suspended after organizing a work stoppage to complaining about working conditions and allegations that workers were interrogated about being union supporters. The matter was settled pre-complaint for \$331 in backpay and noticing.
- Agro-Jal Farming. Workers were disciplined for refusing to work in dangerous conditions (wet and windy). The matter was settled pre-complaint for \$3,252 backpay (10 employees) and noticing.
- Robert Johnson Farms: Four workers were fired after they complained about low wages. Settlement was achieved post-complaint for \$580 in backpay plus noticing.

- Castle Rock Vineyards: Charging Party, United Farm Workers, alleged that 10 employees were terminated and reinstated 2 days later after complaining about wages, water and restroom issues. Settlement was achieved pre-complaint by reinstatement of the workers, plus \$250 to each worker and noticing.
- Rawah Vineyards: Three employees were retaliated against after they raised complaints/concerns regarding sexual harassment. A post-complaint settlement was achieved for back pay for \$48,577 plus noticing.

A check distribution event was held in Stockton on November 5, 2017. One hundred fifty-eight (158) checks were delivered to Ace and San Joaquin Tomato workers totaling \$108,413. Chairwoman Shiroma and Executive Secretary Avila-Gomez attended the event. The ALRB participated in outreach at the event with approximately 10 other organizations including California Rural Legal Assistance, Employment Development Department, Catholic Charities of Stockton, UC Davis, Department of Industrial Relations: Workers' Comp/Cal OSHA, and St. Mary's Dining Room.

Outreach activity: Santa Rosa staff conducted a number of presentations including a radio presentation on KBBF Radio Indígena and an open house at the Santa Rosa office. The Santa Rosa staff also participated in a binational health fair in the Santa Rosa area, a monthly service provider meeting with nonprofits and local agencies, and a Latino service providers' monthly meeting, Oxnard staff attended an outreach event at MICOP, an indigenous nonprofit organization in Order. Visalia staff outreach events included a Mexican Consulate event in Calexico, an event at the Galilee Center in Mecca, a Tulare County Food Day event in Exeter, a Farm Worker Services Coalition meeting in El Centro, and a Farmworker Women's Conference in Visalia.

Three vacancies have been filled: Indio attorney, Indio Senior Legal Typist, and Salinas attorney. Recruiting continues for Indio and Visalia Field Examiners, a Visalia attorney, and a Salinas Office Technician or Senior Legal Typist.

6. Chief of Administration's Report

Chief Rodrigues reported her unit has experienced significant turnover and she currently has three vacancies. Ms. Rodrigues submitted her report to the Board in advance of the meeting. Chief Rodrigues highlighted the unit's accomplishments in human resources, accounting, business services, information technology, budgets, facilities and miscellaneous administrative items. The Board stressed the importance of securing a new site for the Oxnard office and requested Ms. Rodrigues provide a proposal for a new location by the next Board meeting.

7. Regulations – Nothing new to report.

8. Legislation – No changes since last meeting.

AB 12, Cooley. Introduced Dec. 5, 2016. State government: administrative regulations: review.

Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.

This bill would require each state agency to, on or before January 1, 2020, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified. The bill would repeal these provisions on January 1, 2021.

9. Personnel – See reports above.

10. Announcements

None.

The public meeting adjourned at 11:11 a.m.