

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 28, 2018

Time: 10:04 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Executive Secretary Avila-Gomez; Chief Board Counsel Ratshin;
Board Counsel Inciardi and Coffey; Special Legal Advisor Blanco;
Analysts Diaz and Massie
Others Present: ALRB: General Counsel Montgomery; Assistant General Counsel
Shawver; Regional Directors Herrera and Schneider; Division of
Administrative Services Chief Rodrigues; Administration Manager
Shores
LWDA: General Counsel Woo-Sam

OPEN SESSION

- 1. Approval of Minutes:** Board approved 3-0 the minutes of November 28, 2017.
- 2. Public Comment:** None.
- 3. Chairwoman's Report:**

Chairwoman Shiroma congratulated Board Member Cathryn Rivera-Hernandez for her reappointment by Governor Jerry Brown to another five-year term. Board Member Rivera-Hernandez has served on the Board since November of 2002. Prior to her appointments, Cathryn served as Chief Deputy Cabinet Secretary for Governor Grey Davis and as a Special Legal Counsel working with the Office of Legal Affairs on significant legal matters arising with the agencies. Cathryn earned a Bachelor of Science degree from Arizona State University, and her Juris Doctorate degree from Boalt Hall School of Law, University of California, Berkeley, where she was the Editor in Chief of the La Raza Law Journal.

Member Rivera-Hernandez expressed her thanks to the Governor's Office, the Labor and Workforce Development Agency, and Chairwoman Shiroma for their support.

Ms. Shiroma welcomed James Coffey who has joined the ALRB as the Chairwoman's new Board Counsel. Mr. Coffey has over six years of experience in the field of labor law working at the Public Employment Relations Board (PERB) in various capacities since 2011. He received a BA in History with a minor in Spanish in 2005 from the University of Illinois at Urbana-Champaign and his JD in 2010 from McGeorge School of Law. While at McGeorge, Mr. Coffey clerked with the Office of the Federal Defender and was a legal intern with the California Parole Advocacy Program.

The annual agricultural labor conference is scheduled for Friday April 13, 2018, at the UC Davis Law School Kalmanovitz Appellate Courtroom starting at 8:15a.m. It is titled NAFTA, H-2A, Immigration, and ALRB. Professor Emeritus Phil Martin has organized a number of panels with expert speakers. The website indicates registration is filled to capacity, but there is a waitlist feature.

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

ELECTION REPORT

Since the Board's last meeting on November 28, 2017, to the present, there have been no petitions for certification or decertification filed. There has been one (1) Declaration by Representative of Purported Labor Organization. There have been eight (8) filings of Notice of Intent to Take Access one (1) filing of a Notice of Intent to Organize.

DECLARATION BY REPRESENTATIVE OF PURPORTED LABOR ORGANIZATION

Name: Martha Elizabeth Hernandez
Representing: AGUA Agriculture Union of America
Organization Established: January 31, 2018
Declaration Date: January 31, 2018

NOTICE OF INTENT TO TAKE ACCESS (NA)

- Case Name:** Matsui Nursery, Inc.
Case Number: 2018-NA-001-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)

2. **Case Name:** Tinhouse, LLC./Zavala Nursery.
Case Number: 2018-NA-002-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)
3. **Case Name:** Top Industries, LLC./Wave Rider
Case Number: 2018-NA-003-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)
4. **Case Name:** Wave Rider, LLC.
Case Number: 2018-NA-004-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)
5. **Case Name:** Grupo Flor/Hernandez
Case Number: 2018-NA-005-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)
6. **Case Name:** Monterey Botanicals, LLC
Case Number: 2018-NA-006-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)
7. **Case Name:** FLRich Farms, LLC
Case Number: 2018-NA-007-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)
8. **Case Name:** GreenField Organix
Case Number: 2018-NA-008-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)

NOTICE OF INTENT TO ORGANIZE (NO)

Case Name: Matsui Nursery, Inc.
Case Number: 2018-N0-001-SAL
Labor Organization: United Food & Commercial Workers Union, Local 5 (UFCW5)

COMPLAINT REPORT

Since the Board's last meeting on November 28, 2017, to the present, the General Counsel has issued fourteen (14) new complaints:

1. Lagomarsino Group, 2017-CE-009-VIS
December 7, 2017; amended December 8, 2017
2. Premiere Raspberries, LLC, 2017-CE-040-SAL
December 29, 2017
3. Premiere Raspberries, LLC, 2017-CE-034-SAL
December 29, 2017
4. Reiter Berry Farms, Inc., 2016-CE-030-SAL
December 29, 2017
5. D'Arrigo Bros. Co. of California, 2016-CE-022-SAL; 2017-CE-028-SAL
December 29, 2017
6. Monterey Mushrooms, Inc., 2016-CE-032-SAL
December 29, 2017
7. Fowler Packing Company, Inc., 2016-CE-003-VIS
January 8, 2018
8. Premiere Raspberries, LLC, 2017-CE-036-SAL
January 8, 2018
9. Premiere Raspberries, LLC, 2017-CE-064-SAL
January 8, 2018
10. West Coast Berry Farms, LLC, 2016-CE-002-SAL
January 10, 2018
11. Golden West Vegetable, Inc. 2016-CE-028-SAL
January 11, 2018
12. David Abreu Vineyard Management, Inc., 2017-CE-024-SAL
January 26, 2018
13. George Amaral Ranches, Inc., 2017-CE-021-SAL
January 29, 2018
14. Premiere Raspberries, LLC, 2018-CE-004-SAL
February 9, 2018

CASE MANAGEMENT CONFERENCES, PREHEARING CONFERENCES, and SETTLEMENT CONFERENCES SINCE NOVEMBER 28, 2017

Since the Board's last meeting on November 28, 2018, to the present, there have been 10 Case Management Conferences (CMC), Prehearing Conferences (PHC), and Settlement Conferences held.

COMPLAINTS WITHDRAWN

Sun Pacific Farming Cooperative Inc., 2015-CE-032-VIS

December 28, 2017: informal bilateral settlement

Growers Express, LLC, 2016-CE-035-SAL

January 10, 2018: informal bilateral settlement

Pacific Ag Management, Inc. 2015-CE-043-VIS

February 21, 2018

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

- **Arnaudo Brothers, LP and Arnaudo Brothers, Inc., 2015-CE-006-VIS, 2017-CE-003-VIS:**
Submitted on Stipulated record. Post-hearing briefs received February 27, 2018.

ALJ/IHE DECISIONS ISSUED

- **United Farm Workers (Angel Lopez), 2015-CL-006-VIS:**
Decision issued December 11, 2017.
- **P & M Vanderpoel Dairy (Joel Noel Castellon Martinez) 2013-CE-016-VIS:**
Decision issued December 15, 2017

CASES PENDING BOARD DECISION OR ACTION

- **United Farm Workers (Olvera/Magaña), Case Nos. 2013-CL-002-SAL, et al.**
Exceptions received 8/31/17; Replies received 9/25/17.
- **P & M Vanderpoel Dairy, 2013-CE-016-VIS**
Exceptions received 1/11/18; Replies received 1/24/18.
- **United Farm Workers (Lopez), 2015-CL-006-VIS**
Exceptions received 1/22/18; Replies received 2/7/18.

THE BOARD HAS ISSUED THREE NEW BOARD DECISIONS AND THREE NEW ADMINISTRATIVE ORDERS

BOARD DECISIONS ISSUED

- **Spawn Mate, Inc. dba Mushroom Farms, 2016-MMC-01**
43 ALRB No. 3; Board decision issued December 8, 2017:

Pursuant to Labor Code section 1164.3, subdivision (a), the Board may accept for review those portions of a petition for review for which a prima facie case has been established that a provision of the collective bargaining agreement set forth in the mediator's report is (1) unrelated to wages, hours or other conditions of employment, (2) based on clearly erroneous finding of material fact, or (3) arbitrary or capricious in light of the mediator's findings of fact. After evaluation of the requests for review, the Board granted review only as to Mushroom Farms' petition concerning an incentive bonus rate provision, and the Board remanded that issue to the Mediator, in accordance with Labor Code section 1164.3, subdivision (c). In all other respects the Board found that the parties failed to establish a prima facie case that the Mediator's findings of material fact were clearly erroneous, or that the provisions fixed in his Report and Supplemental Report were arbitrary or capricious in light of his findings of fact.

- **Gerawan Farming, Inc. 2012-CE-041; 2013-CE-007-VIS; 2013-CE-010-VIS**
44 ALRB No. 1; Board decision issued January 22, 2018:

The Board affirmed the ALJ's factual findings and legal conclusions consistent with its own decision. The Board applied the "totality of the circumstances" test applicable in surface bargaining cases and determined that Gerawan's conduct as a whole, both at and away from the bargaining table, demonstrated a violation of the duty to bargain in good faith. The Board agreed with the ALJ that Gerawan's insistence on removing the FLC workers from the scope of any collective bargaining agreement, and its persistent refusal to bargain over their wages, hours, and terms and conditions of employment, violated the ALRA. The Board also denied Gerawan's request for a stay of this case pending the appellate court's review of the Board's decision in Gerawan Farming, Inc. (2016) 42 ALRB No. 1.

- **Premiere Raspberries, LLC 2018-MMC-001**
44 ALRB No. 2; Board decision issued February 15, 2018:

The Board dismissed the request for referral to MMC because 90 days have not elapsed since an initial request to bargain following the certification of representative as required under Labor Code section 1164, subdivision (a). The

Board also denied Premiere's request for an order staying all future requests for MMC pending judicial review of the certification based on its technical refusal to bargain with the UFW. Labor Code section 1158 specifically states that the filing of a petition for review in a ULP case to obtain indirect review of a Board certification in a representation proceeding (such as in the case of a technical refusal to bargain) "shall not be grounds for a stay of proceedings conducted pursuant to" the MMC statute.

ADMINISTRATIVE ORDERS

- 1. Admin Order 2017-20 [Premiere Raspberries, LLC, 2017-RC-004-SAL]:**
On December 6, 2017, the Board issued an Admin. Order Denying Motion for Reconsideration.
- 2. Admin Order 2018-01 [California Artichoke and Vegetable Corporation dba Ocean Mist Farms, 2012-CE-044-VIS; 2013-CE-012-VIS (41 ALRB No. 2)]:**
On January 4, 2018, the Board issued an Admin Order Staying Regional Director's Request for Leave to Seek Court Order Requiring Compliance with Board Order.
- 3. Admin Order 2018-02 [Gerawan Farming Inc., 2013-MMC-003, 39 ALRB No. 17, 39 ALRB No.16, 39 ALRB No. 13, 39 ALRB No. 11 (39 ALRB No. 5)]:**
On February 5, 2018, the Board issued an Admin Order Denying Request for Order Directing Parties to Mediation to update Economic Contract Terms.

MANDATORY MEDIATION AND CONCILIATION

As noted above, the Board dismissed the United Farm Worker's February 2, 2018, request in Premiere Raspberries, LLC 2018-MMC-001, for referral to Mandatory Mediation and Conciliation because 90 days had not elapsed since an initial request to bargain following the certification of representative as required under Labor Code section 1164, subdivision (a).

ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

- ***Tri-Fanucchi Farms v. ALRB, Fifth District Court of Appeal, Case No. F069418***

Summary: On remand to the Fifth Appellate District after the California Supreme Court affirmed in part and reversed in part the appellate court's prior opinion.

Status: The California Supreme Court issued its opinion on November 27, 2017, affirming the portion of the appellate court’s opinion upholding the Board’s rejection of the employer’s union “abandonment” defense, and reversing the portion of the appellate court’s opinion reversing the Board’s remedial bargaining make-whole award. The Court issued its remittitur on December 28, 2017. On January 25, the appellate court requested responses from the parties identifying whether any issues remained pending in the appellate court. The Board filed a response on February 5 stating no issues remained pending. The employer did not file a response.

► ***Gerawan Farming, Inc. v. ALRB, et al., Fifth District Court of Appeal, Case No. F073720***

Summary: Petition for writ of review of the Board’s decision in 42 ALRB No. 1, in which the Board found Gerawan committed unfair labor practices, dismissed a decertification petition, and set aside a decertification election.

Status: On February 8, 2018, the appellate court advised the parties it will be scheduling this case for oral argument in April. Gerawan and the United Farm Workers of America filed their respective oral argument questionnaires on February 16. The Board filed its oral argument questionnaire on February 20. On February 27, Silvia Lopez filed a request to present argument.

► ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F077033***

Summary: Petition for writ of review of the Board’s decision in 44 ALRB No. 1, in which the Board found that Gerawan committed unfair labor practices by engaging in surface bargaining with the United Farm Workers of America and by insisting on the exclusion of workers employed by farm labor contractors from the terms of a collective bargaining agreement.

Status: Gerawan filed its petition for writ of review on February 21, 2018. On February 22, the court directed the Board to prepare and file the certified record within 10 days (i.e., by March 5). Gerawan filed an errata and corrected petition for review on February 26.

Mandatory Mediation and Conciliation Litigation

► ***Gerawan Farming, Inc. v. ALRB*, United States Supreme Court, Case No. 17A839**

Summary: Petition for Writ of Certiorari seeking review of the California Supreme Court’s opinion in *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118.

Status: The California Supreme Court issued its opinion on November 27, 2017, reversing the appellate court’s opinion and concluding that the MMC statute does not violate substantive due process, equal protection, or constitute an unconstitutional delegation of legislative power. On December 15, Gerawan filed an application to stay issuance of the Court’s remittitur in order to allow it time to file its petition for writ of certiorari in the United States Supreme Court. The United Farm Workers of America filed an opposition on December 18, and the Board filed a statement taking no position on the application on December 19. The Court denied Gerawan’s application for a stay on December 21. The Court issued its remittitur on January 4, 2018. On February 7, Gerawan applied to the United States Supreme Court for an extension of time to file a petition for writ of certiorari from February 25 to March 28. The application was granted on February 8, and Gerawan’s petition is now due March 28, 2018.

► ***Gerawan Farming, Inc. v. ALRB*, Fifth District Court of Appeal, Case No. F068526**

Summary: On remand to the Fifth Appellate District after the California Supreme Court issued an opinion reversing the appellate court’s prior opinion.

Status: The California Supreme Court issued its opinion on November 27, 2017, reversing the appellate court’s opinion and concluding 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 Court issued its remittitur on January 4, 2018. On January 25, the appellate court requested responses from the parties identifying whether any issues remained pending in the appellate court. The parties all filed responses on February 5.

► ***Gerawan Farming, Inc. v. ALRB, et al.*, Fifth District Court of Appeal, Case No. F076148**

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 January 9, 2018, the court notified the parties by letter that the reporter’s transcript had been filed in the appellate court, and that appellants’ opening briefs would be due in 40 days. Gerawan and Garcia filed a joint opening brief on February 20. The Board’s respondent’s brief is due March 22, and any reply will be due April 11.

5. General Counsel’s Report

General Counsel Montgomery extended her congratulations to Member Rivera-Hernandez on her reappointment. In addition to what the Executive Secretary reported, the General Counsel’s office has achieved the following settlements.

The Oxnard office achieved a settlement for five indigenous farmworkers at San Miguel Produce, Inc., who were working in mint fields and were subject to derogatory comments, assigned worse working conditions, and threatened with termination. The workers received full backpay of \$21,000 and were offered reinstatement.

The Santa Rosa office achieved a settlement for a farmworker at Redwood Empire Vineyard Management who was retaliated against after complaining about sexual harassment on behalf of herself and others, which included backpay for \$17,600.

A male worker at Rancho Buenaventura was laid off after he complained on behalf of female employees being sexually harassed. Settled for usual remedies including backpay of \$29,892.

Outreach—The General Counsel staff has been getting the word out about the Act and people’s rights. General Counsel Montgomery along with staff from Indio and Oxnard attended the 38th Annual Farm Worker Appreciation Breakfast in Calexico on December 1, 2017. They distributed outreach materials and talked with farm workers about their rights and the services our department provides as well as networked with other service providers. On February 11, 2018, Regional Director Schneider was interviewed on Radio Bilingüe, and on December 11, 2017, and February 12, 2018, he appeared on Arriba Valle Central. Mercy Barrera appeared on Arriba Valle Central on December 11, 2017.

The ALRB Oxnard staff conducted an outreach presentation to Indigenous farmworkers together with DLSE and organized by the nonprofit organization MICOP on February 26, 2018.

Rosario Miranda of the ALRB Indio office participated in an outreach event hosted by Assemblymember Garcia.

We are recruiting for the following positions: 1 attorney in Visalia, 2 field examiners in Visalia, clerical support in Salinas, and 1 attorney in Santa Rosa. Xavier Sanchez has returned as an attorney in the Visalia office.

Three vacancies have been filled since the last meeting: an attorney in the Indio office, a Senior Legal Typist in the Indio office, and an attorney in the Salinas office. Recruiting continues for Indio and Visalia field examiners, a Visalia attorney, and a Salinas Office Technician or Senior Legal Typist.

6. Chief of Division of Administrative Services Report

Chief Rodrigues and Regional Director Schneider presented four options for relocation of the Visalia Regional Office. The current space allocation is 2,876 square feet. Department of General Services (DGS) recommended a space allocation of 4,342 square feet. In addition to the size of the office space, consideration was given to cost per square foot, availability of parking for staff and visitors, convenience of location, and tenant improvement costs. In addition to the lack of space at the current location, parking is extremely limited and the conference room is not large enough to accommodate all attendees at meetings and hearings.

The Industrial Park location features a large fenced parking lot, a good-sized conference room, offers room for growth, provides convenient highway access, offers the lowest cost per square foot, and is almost turnkey. No construction would be needed. The ALRB would be the only tenant. The carpet would need to be replaced. We would request installation of more windows or skylights, fresh paint, and some ADA improvements. The location is isolated from downtown and amenities, but the area is rapidly growing.

The Central Park location is approximately 1,000 feet smaller than what DGS recommends. It is around the corner from the current location and offers a large parking lot that is closed and locked in the evening. There are multiple tenants in the complex. Walls will need to be built and two showers need to be converted to offices. The space may be too small once the design is set.

Suncrest Bank location is aesthetically the nicest. The rent would increase by more than \$2,000 a month and the location needs many improvements. There is plenty of parking behind the building but vehicles would remain in an open lot. The building offers a central location and a great open floor design. We would be the sole tenant. This space would probably require the most costly tenant

improvements and has the most expensive base rent.

The Main Street location offers a central downtown location. The location is approximately 600 square feet smaller than the DGS recommendation. There are six dedicated parking spaces, but plenty of free public parking in a garage behind the building. However, the free parking is not easily visible from Main Street. The location itself would afford more visibility. The space would require major tenant improvements to build offices, thereby most likely incurring the second highest tenant improvement costs. The restrooms are shared with other tenants.

The members discussed questions regarding convenience of office locations, visibility, potential for growth, cost, signage, secured parking, and building security.

The Board voted 3-0 to move forward with the Industrial Park lease option.

Chief Rodrigues submitted her written report prior to the meeting. The Human Resources position has been filled. In January, a Staff Services Manager I was hired. She is learning her area of business services and accounting. Interviews are ongoing for the business services position.

The lease for the Oxnard office is ending sooner than anticipated. Chief Rodrigues thanked Member Hall for his assistance in temporarily relocating the Oxnard staff to the third floor in the same building. Focus will be on a long-term solution

7. **Regulations** – Nothing new to report.

8. **Legislation**

▶ **Assembly Bill No. 2751 [Stone (D)]**

Summary: This bill would amend the Agricultural Labor Relations Act to state the intent of the Legislature to protect the rights of agricultural employees.

Status: Introduced February 16, 2018. May be heard in committee March 19.

▶ **Assembly Bill No. 3092 [Patterson (R)]**

Summary: This bill would amend Labor Code section 1154 of the Agricultural Labor Relations Act regarding labor organization unfair labor practices to state that a labor organization shall not abandon or fail to represent a bargaining unit for a period of three years or more. It additionally would require the Board shall decertify a labor organization that violates this provision.

Status: Introduced February 16, 2018. May be heard in committee March 19.

► **Assembly Bill No. 3093 [Patterson (R)]**

Summary: This bill would add Labor Code section 1164.1 to the Agricultural Labor Relations Act to provide that a final Board order setting the terms of a collective bargaining agreement between an employer and certified labor organization following mandatory mediation and conciliation shall not take or be enforceable until it is approved by a majority of the agricultural employees of the bargaining unit affected by the order.

Status: Introduced February 16, 2018. May be heard in committee March 19.

► **Assembly Bill No. 3094 [Patterson (R)]**

Summary: This bill would amend subdivision (f) of Labor Code section 1156.3, which currently provides that the Board shall certify a labor organization as the exclusive bargaining representative of a bargaining unit if the Board refuses to certify election results based on employer misconduct that would render slight the chance of a new election reflecting the free and fair choice of the employees. This bill would instead require the Board to order a new election where misconduct affected the results of a prior election, except that if misconduct by an employer or labor organization is found to be so egregious that a new election reflecting the free and fair choice of the employees is not possible then the election results shall be certified against the party that engaged in such misconduct, subject to appellate review.

Status: Introduced February 16, 2018. May be heard in committee March 19.

9. Personnel – See reports above.

10. Announcements

None.

The public meeting adjourned at 11:04 a.m.