

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 17, 2014

Time: 9:30 a.m.
Members Present: Chairman Gould, Members Shiroma and Rivera-Hernandez
Staff Present: Executive Secretary Barbosa; Board Counsel Heyck, Dixit and Inciardi; Special Counsel to the Board Starkey; ALJ Soble and Analyst Massie
Others Present: Gerawan Workers including Silvia Lopez and Graciela Castro; Frances Low, Principal Consultant, Senate Rules Committee; General Counsel Attorney Gaitan, LWDA Staff: Jay Sturges, April Kline and Vianey Garcia.

OPEN SESSION

- 1. Approval of Minutes:** Approval of the July 16, 2014, minutes was continued to the next meeting public meeting.
- 2. Public Comment:**

Workers from Gerawan Farming, Inc. including the decertification petitioner in Case No. 2013-RD-003-VIS, Silvia Lopez, attended the meeting. Executive Secretary Barbosa explained to the Gerawan workers who were present that they could not talk about matters pending before the ALRB or matters that may come under investigation and be brought before the Board for decision. The appropriate place to discuss those matters will be the hearing that will take place over approximately 17-20 weeks in Fresno, California, starting September 29, 2014. Workers will be able to testify, under penalty of perjury, and all parties will have an opportunity to present their positions. The testimony of witnesses will come before the Board at some point in time after the administrative law judge has heard all the testimony, considered all the evidence, and made his decision. That is how the voice of the workers as well as all other parties will be presented to the Board.

Silvia Lopez and other Gerawan workers spoke and expressed their desire that the voices of the workers be heard. Ms. Lopez stated she and her fellow workers do not

feel the General Counsel and her staff are protecting their rights. Ms. Lopez thanked Chairman Gould for taking time to speak with her during the Board's visit to the Visalia Regional Office.

Chairman Gould thanked Ms. Lopez and the workers for taking time to appear before the Board.

3. Chairman's Report:

Chairman Gould reported that since July 2014, the Department of Finance has been conducting an audit of all phases of the ALRB's operations in Sacramento and the regions. The auditors will meet with the Board this week to update the Board on the status of the audit and the timeline for its completion. The audit has included meetings with ALRB staff, both in groups and individually, and involved a review of personnel, budget, case files and other agency records. Once the process is finalized, the Department of Finance will issue a Performance Audit Report discussing its findings that will be accessible at the Department of Finance website.

On July 15, 2014, Chairman Gould, Executive Secretary Barbosa, and Special Counsel Starkey met with interested persons, particularly persons who have already had some experience with the ALRB's mandatory mediation and conciliation procedures, for an initial meeting to discuss the development of a training program for potential mediators handling referrals from the ALRB in mandatory mediation and conciliation (MMC) cases. The goal is to train and expand the pool of qualified mediators.

The law was enacted effective January 1, 2003. There was initial training on the new law, but now, some 10 years later, the desire is to inform practitioners about the law and its practical application. Another purpose is to generate interest to the next generation of practitioners and neutrals.

As a result of this meeting, the Board is will provide a half-day training session to be held on January 22, 2015, in Sacramento. Marty Morgenstern, former Secretary of the Labor and Workforce Development Agency is the keynote speaker. An expert panel of current practitioners will discuss MMC, the process and its practical applications. Participants include Ronald Barsamian, Robert Carroll, Mario Martinez and Matthew Goldberg.

Senate Bill 25 is a proposed amendment to the statute that will give the Board the authority to enforce Mandatory Mediation and Conciliation agreements and take them to court when one of the parties initiates a process before the Board. The bill is pending signature before Governor Brown.

4. Executive Officer Report

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO)

On July 23, 2014, the United Food and Commercial Workers (“UFCW”) filed with the Visalia ALRB Regional Office two notices of intent to take access (“NAs”) at Norcal Nursery, Inc./Sakuma Bros. Farms, for two separate locations, Red Bluff and Turlock, with a new thirty-day period of access. As the NAs were not renewed after 30 days, both have now lapsed. No new Notices of Intent to Organize (NOs) have been filed since the Board’s last meeting.

PENDING ELECTION MATTERS

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

On October 25, 2013, Sylvia Lopez (Petitioner) filed a petition to decertify the United Farm Workers of America (UFW) as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. (Employer). An election was held on November 5, 2013, and the ballots were impounded. On December 19, 2013, the Board issued its decision directing an investigative hearing on UFW Objection No. 1, that was to be consolidated with ULP complaint 2013-CE-039-VIS, and UFW Objection No. 2 should a complaint issue in ULP charge 2013-CE-39-VIS.

A further prehearing conference is scheduled on September 22, 2014, and a hearing is scheduled to commence on September 29, 2014 in Fresno CA. The hearing is expected to last between 17-20 weeks according to estimates provided by the parties.

On September 9, 2014, the General Counsel issued an amended consolidated complaint on 21 charges, including ULP charges 2013-CE-027-VIS and 2013-CE-039-VIS. On September 15, 2014, the Respondent filed its answer to the complaint and also filed a motion to sever the amended consolidated complaint and to enforce the Board’s decision on election objections in 39 ALRB No. 20. On September 16, 2014, the Board issued an order shortening time to respond to Respondent’s motion to sever. The response is due September 18, 2014, by 5:00 p.m.

COMPLAINT REPORT

COMPLAINTS ISSUED

Herbco International, Inc., Case No. 2014-CE-001-VIS

On August 7, 2014, the General Counsel issued a new complaint in Herbco International, Inc., Case No. 2014-CE-001-VIS. The complaint alleges that the employer unlawfully terminated an employee because the worker complained to management of the unacceptable working conditions under their assigned supervisor.

Harbor View Farms, LLC, 2013-CE-035-SAL

On August 20, 2014, the General Counsel issued a complaint in Harbor View Farms, LLC, Case No. 2013-CE-035-SAL. The complaint alleges that the Employer unlawfully retaliated against workers who engaged in protected concerted activity (workers complained about the condition and cleanliness of the bathrooms, the cleanliness of the drinking water, and the treatment by company supervisors) and further retaliated against some of the same employees after they filed an unfair labor practice charge with the agency.

COMPLAINTS WITHDRAWN

None.

SIX HEARINGS SCHEDULED

California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms, 2012-CE-044-VIS (6 days)

The hearing is scheduled for September 23, 2014.

McGrath Family Farm, 2013-CE-027-SAL (2 days)

The hearing is scheduled for September 23 & 24, 2014.

Gerawan Farming, Inc., 2013-RD-003-VIS (17-20 weeks)

The hearing is scheduled for September 29, 2014.

Arnaudo Brothers, 2012-CE-030-VIS (2 days)

The hearing is scheduled for October 14 and 16, 2014.

Arnaudo Brothers, 2012-CE-028-VIS (2 days)

The hearing is scheduled for October 14 and 15, 2014.

Ace Tomato Company, Inc., 93-CE-37-VIS (26-30 days)

The hearing is scheduled for December 15, 2014.

HEARINGS IN PROGRESS

None.

CASES SETTLED AT HEARING

None.

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

Arnaudo Brothers, LP and Arnaudo Brothers, Inc., 2012-CE-030-VIS

The matter was remanded to the ALJ for issuance of a supplemental decision on the question of whether a disclaimer of interest occurred. The hearing on disclaimer of interest is scheduled for October 14 and 16, 2014. The Charging Party has requested leave of the assigned ALJ to permit parties to submit briefing on why makewhole should not be awarded in this case.

ALJ/IHE DECISIONS ISSUED

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

All briefing had been completed and the matter is pending decision by the Board.

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

All briefing had been completed and the matter is pending decision by the Board.

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

All briefing had been completed and the matter is pending decision by the Board.

San Joaquin Tomato Growers, Case No. 2011-MMC-001

All briefing had been completed and the matter is pending decision by the Board.

Ace Tomato Company, Inc., 93-CE-037-VI

On August 4, 2014, the General Counsel filed a request for permission to appeal ALJ's order granting Respondents' petitions to revoke. The matter is pending Board decision.

Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc., 2013-CE-029-VIS

On August 21, 2014, the General Counsel filed a request for leave to seek court compliance with subpoenas. On September 10, 2014, the Board issued an administrative order setting a response due date of September 17, 2014, for Respondent's response.

Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc., 2013-CE-030-VIS

On August 29, 2014, the UFW filed a request to seek leave from the ALJ to permit

the parties to submit briefing on why makewhole should not be awarded in this case. A hearing in this matter is scheduled for October 14, 2014.

Ace Tomato Company, Inc., 93-CE-037-VIS

On September 12, 2014, the respondent filed a request for a mandatory settlement conference.

Arnaudo Brothers, 2013-MMC-001

On September 12, 2014, the mediator filed his supplemental report following remand from the Board on two challenged provisions of the collective bargaining contract, i.e., contract duration and term of agreement. The matter is pending Board review.

CASES REFERRED TO COMPLIANCE

None.

COMPLIANCE CASES CLOSED:

None.

BOARD DECISIONS/ADMINISTRATIVE ORDERS:

The Board has issued one board decision and five administrative orders since its last meeting.

BOARD DECISIONS

P&M Vanderpoel Dairy, 2013-CE-016-VIS

Board decision issued August 28, 2014. Petition for review, if any, is due September 29, 2014.

ADMINISTRATIVE ORDERS

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

On July 24, 2014, the Board issued an order requesting briefing from the parties and amici on questions posed by the Board regarding alleged violations of the collective bargaining agreement. Admin. Order No. 2014-20.

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

On August 1, 2014, the Board issued an order denying UFW's motion to schedule certain consolidated unfair labor practice cases for hearing. Admin. Order No. 2014-21.

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

On July 31, 2014, the Board issued an order directing that the Executive Secretary re-set the election case for hearing beginning September 29, 2014. The Board also

directed the General Counsel to file a status report on the investigation of ULP charge number 2013-CE-039-VIS by August 5, 2014. Admin. Order No. 2014-22.

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

On August 29, 2014, the Board issued an order rejecting the petitioner's untimely response to briefing questions posed by the Board. Admin. Order No. 2014-23.

Arnaudo Brothers, LP, and/or Arnaudo Brothers, Inc., 2013-CE-029-VIS

On September 10, 2014, the Board issued an order setting the time for Respondent to file a response to General Counsel's request for production of documents. Admin. Order 2014-24.

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

On September 16, 2014, the Board issued an order shortening time to respond to Respondent's motion to sever. Admin. Order 2014-25.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Arnaudo Brothers, Inc., 2013-MMC-001

On June 2, 2014, the Board issued an order concerning the parties' petitions for review of the Mediator's final report. The Board found that Arnaudo's petition did not establish a prima facie case that the report was based on clearly erroneous finding of fact or was arbitrary or capricious. However, the Board did find that the UFW's petition established a prima facie case and granted review with respect to two articles of the MMC Contract.

On June 27, 2014, the Board issued a decision and order sustaining a petition for review filed by the UFW finding that, with respect to articles two (union security) and twenty-four (contract duration) of the MMC Contract, the Mediator's rulings were arbitrary and capricious, because the Mediator improperly relied upon his conjecture concerning employee support for the union, and purported desire on the part of employees for an election to remove or replace the UFW. The Board also found that, with respect to article twenty-four, the Mediator's finding that Arnaudo's employees had never had the opportunity to express their desires as to union representation was clearly erroneous. A majority of the Board also found that the Mediator ordered a one-year contract without distinguishing his prior reports in MMC cases where he ordered three-year contracts. Chairman Gould wrote separately to express his view that requiring the Mediator to provide a reasoned distinction between prior and subsequent reports unduly restricts the flexibility desirable for a third-party mediator, and that that what the mediator did in prior reports should matter little, or not at all, so long as the Mediator adheres to the relevant statutory criteria. The Board remanded the matter to the mediator for further mediation proceedings and the issuance of a

second report. On September 15, 2014, the mediator's supplemental report was received. The mediator directed the parties to meet and confer with regard to wage rates for the second year consistent with his recommendation that the contract duration be for two, not one, years. The matter is pending the parties' submissions of wage rates for the second year.

See court litigation for court case also involving this case.

Perez Packing, Inc., 2014-MMC-002

On May 13, 2014, the UFW faxed a copy its declaration requesting that the Board issue an order directing the parties, the UFW and Perez Packing, Inc., to mandatory mediation pursuant to Labor Code section 1164(b). On May 16, 2014, the employer filed its answer and argument in response to the UFW's declaration. On March 26, 2014, the Board issued a Board decision referring this matter to mandatory mediation. On June 12, 2014, the UFW informed the CSMCS that the parties had selected Louis M. Zigman as the mediator in this case. On September 16, 2014, the mediator and parties advised the Executive Secretary that the parties had reached a voluntary agreement, the Petitioner UFW would be withdrawing its MMC request, Perez Packing would be closing after this season and that all issues concerning the effects of the closure are part of the parties' overall agreement.

ALRB BOARD LITIGATION

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

Assigned Counsel: Deputy Attorney General Aaron Jones; Special Board Counsel Paul M. Starkey

Other Counsel: Paul Bauer (Silvia Lopez, employee)

Filing Date: August 22, 2014

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

Description: Action below filed February 20, 2014, by Gerawan employee, Silvia Lopez, seeking an order to have the Board tally and disclose the ballots in the decertification election involving Gerawan Farming Inc. and the United Farm Workers of America (UFW) (ALRB Case No. 2013-RD-003-VIS). The action names, as individuals, Board Members Genevieve Shiroma and Cathryn Rivera

Hernandez, Executive Secretary J. Antonio Barbosa, and Regional Director Silas Shawver.

Status and Last Action Date: Notice of appeal filed August 22, 2014.

Federal District Court

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

On Appeal: *Lopez v. Shiroma, et al.*, United States Court of Appeals, Ninth Circuit, Case No. 14-16640 **Assigned Counsel:** Deputy Attorney General Aaron Jones; Special Board Counsel Paul M. Starkey

Other Counsel: Paul Bauer (Silvia Lopez, employee)

Filing Date: February 20, 2014

Summary: 42 USC § 1983 action for alleged civil rights violations arising out of representation election.

Description: Action filed February 20, 2014, by Gerawan employee, Silvia Lopez, seeking an order to have the Board tally and disclose the ballots in the decertification election involving Gerawan Farming Inc. and the United Farm Workers of America (UFW) (ALRB Case No. 2013-RD-003-VIS). The action names, as individuals, Board Members Genevieve Shiroma and Cathryn Rivera Hernandez, Executive Secretary J. Antonio Barbosa, and Regional Director Silas Shawver.

Status and Last Action Date: Upon stipulation and order for extension of time, a motion to dismiss was filed on April 21, 2014, on behalf of the named defendants. Hearing on the motion was continued by stipulation from May 19, 2014, to June 16, 2014. After initial briefing, the court ordered the matter submitted, without hearing. On July 24, 2014, the court issued its ruling granting the demurrer in part, but allowing the matter to proceed on claims of interference with First Amendment right of association. On August 8, 2014, upon stipulation of the parties, the court vacated the case conference and other deadlines and granted a stay of proceedings. On August 19, 2014, plaintiff filed a motion to appoint a special master to take and count the impounded ballots. The ALRB defendants filed a Notice of Appeal on August 22, 2014 on jurisdictional grounds (immunity defenses). In response to plaintiff's intention to engage in discovery, the Board defendants filed a motion to stay proceedings on August 26, 2014.

Fifth District Court of Appeal

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

Assigned Counsel: Scott Inciardi, Senior Board Counsel

Other Counsel: Robert K. Carroll, Nixon & Peabody (employer); Mario Martinez, UFW (union)

Filing Date: August 24, 2012

Summary: Petitioner Employer seeks review and stay of Board's decision affirming the mediator's report fixing the terms of a collective bargaining agreement between the employer and the union.

Description: On August 24, 2012, Ace Tomato Company (Ace) filed a petition for writ of review Fifth District Court of Appeal (5 DCA) seeking appellate review of the Board's decision in 38 ALRB No. 6 and a stay of that decision. In that decision, pursuant to the Mandatory Mediation and Conciliation (MMC) provisions of the Agricultural Labor Relations Act, the Board in 38 ALRB No. 6 affirmed the mediator's report fixing the terms of a collective bargaining agreement between Ace and the United Farm Workers of America (UFW), the certified representative. In August 2012, the Board and the UFW separately filed 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 Third District Court of Appeal (3 DCA). 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 5 DCA issued two orders. One order denied the request to transfer the case to the 3 DCA, without prejudice to filing a request directly with the California Supreme Court. The other order granted Ace's request to stay the Board's decision pending court review. On October 25, 2012, the UFW filed an opposition to Ace's motion to augment the record, which the Board joined. On October 31, 2012, the Board filed a petition for rehearing on proper venue. On November 14, 2012, the Board filed its response brief on the merits and on December 7, 2012, the UFW filed its response. Ace filed its reply brief on January 16, 2013. On February 13, 2013, the 5 DCA issued a writ to have the case heard. The court denied the Board's petition on venue, and kept the stay in effect.

On September 24, 2013, the court by letter directed the parties to inform the court about the status of the case and whether it had settled. On October 23, 2013, the Board informed the court of the status of settlement and asked leave to file a status update. On November 4, 2013, the Board issued its order (Admin. Order No. 2013-48) granting the General Counsel's motion for an extension of time to November 19, 2013, to file a formal bilateral settlement agreement in compliance with Administrative Orders 2013-35 and 2013-42. On November 12, 2013, the Board so informed the court of the settlement status. On November 25, 2013, the Board further advised the court that the parties were unable to reach settlement and that the Board

had decided to meet directly with the parties to facilitate settlement. At the Board's request, the court agreed to the case in abeyance pending settlement attempts.

ALJ Thomas Sobel is serving as settlement judge. A settlement conference was held on January 14, 2014. The Board requested the Executive Secretary to inquire about the status of settlement discussions. On May 14, 2014, the court inquired about the status of the case.

Status and Last Action Date: The parties provided status letters to the Acting Executive Secretary, which were submitted to the Board. The Board reviewed the matter and on May 29, 2014, requested that the court take the case out of abeyance. The matter is pending court action.

San Joaquin Tomato Growers, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F068406;

39 ALRB No. 15 (October 23, 2013)

Assigned Counsel: Laura Heyck, Senior Board Counsel

Other Counsel: Spencer Hipp (employer); Mario Martinez (union)

Filing Date: November 22, 2013

Summary: Writ of Review of Board's decision and order in 39 ALRB No. 15

Description: 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. On January 7, 2014, the Board filed the certified record with the court. On January 24, 2014, SJTG filed a request for extension of time to file its opening brief, which the court granted. The Employer's opening brief was filed on April 11, 2014. Opposition briefs of the ALRB and the UFW were filed on June 30, 2014.

Status and Last Action Date: Employer's reply brief was filed on August 25, 2014. The case is briefed, and pending court action.

Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F068526
39 ALRB No. 17

Assigned Counsel: Benjamin Glickman, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

Other Counsel: Ronald H. Barsamian (Barsamian Saqui and Moody) (Employer); C. Russell Georgeson (Georgeson, Belardinelli & Noyes) (Employer); David Schwarz (Irell & Manela) (Employer); Mario Martinez (union); Scott Alan Kronland (Altshuler Berzon) (union); Luke A. Wake (NFIB Small Business Legal Center, amicus); Anthony Caso (Western Growers Assn, amicus); Silvia Lopez (Anthony P. Raimondo, amica).

Filing Date: December 16, 2013

Summary: Various constitutional challenges to Board's Decision in 39 ALRB No. 17, where the Board approved an MMC contract between the Employer and the Union.

Description: On December 16, 2013, Gerawan filed in the 5 DCA a petition for writ of review and stay of the Board's decision in 39 ALRB No. 17, in which the Board approved a collective bargaining agreement reached through the Mandatory Mediation and Conciliation process. On December 23, 2013, the Board filed its opposition to Gerawan's request for temporary stay. On January 7, 2014, Gerawan filed its response to the Board's opposition. Also on January 7, 2014, UFW filed its opposition to the request for stay and preliminary opposition to petition for writ of review. On January 14, 2014, Gerawan filed its response to the UFW's opposition to the stay request and preliminary opposition to petition for writ of review. On February 10, 2014, the parties requested to consolidate cases nos. F068526 and F068676. On February 11, 2014, the court denied Gerawan's request for temporary stay. Also on February 11, 2014, the court granted Gerawan's request for judicial notice filed February 10, 2014 and deferred the parties' request for expedited schedule due to the pending request for consolidation of cases nos. F068526 and F068676. After briefing by the parties, the court on May 1, 2014, granted requests for briefing by amici (NFIB Small Business Association, Western Growers Association, and Silvia Lopez).

Status and Last Action Date: As of May 28, 2014, the matter was fully briefed, pending oral argument.

Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F068676

Fresno Superior Court Case No. 13CECG01408

Assigned Counsel: Benjamin Glickman, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

Other Counsel: C. Russell Georgeson (Georgeson , Belardinelli & Noyes) (Employer); David Schwarz, Michael A. Behrens (Irell & Manela) (Employer) Mario Martinez (union).

Filing Date: January 15, 2014

Summary: Appeal from Fresno Superior Court (Judge Black) ruling denying petition for writ of mandate challenging the MMC process for lack of jurisdiction.

Description: On January 15, 2014, Gerawan Farming Inc. (Gerawan) appealed from the September 26, 2013 order of the Fresno County Superior Court (Judge Black) denying its petition for writ of mandate, which the court denied for lack of jurisdiction. On January 27, 2014, Gerawan requested consolidation of cases. On

February 10, 2014, the court deferred ruling on appellant's January 27, 2014 request for consolidation of cases nos. F068526 and F068676 and directed that the cases be briefed separately but coordinated so that they may be considered by the same panel for hearing. The record on appeal was filed on April 10, 2014. The Employer filed its opening brief on June 13, 2014.

Status and Last Action Date: On September 9, 2014, the matter was fully briefed.

Perez Packing, Inc., Fifth District Court of Appeal No. F068697; 39 ALRB No. 19

Assigned Counsel: Raj Dixit, Senior Board Counsel

Other Counsel: Ronald Barsamian, Barsamian & Moody (employer), Mario Martinez, UFW (union)

Filing Date: January 17, 2014

Summary: Writ of Review of Board's decision and order in 39 ALRB No. 19

Description: On January 17, 2014, Perez Packing, Inc. filed a petition for writ of review of the Board's decision in 39 ALRB No. 19, in which the Board found the employer engaged in bad faith bargaining by failing to provide information to the union. The certified record was filed with the court on February 3, 2014.

Status and Last Action Date: The matter was fully briefed on May 6, 2014. On May 8, the Court of Appeal issued a writ of review and a corrected writ on May 12, 2014. Oral argument to be set.

Tri-Fanucchi Farms, Fifth District Court of Appeal No. F069419;

40 ALRB No. 4

Assigned Counsel: Scott Inciardi, Senior Board Counsel

Other Counsel: Howard Sagaser (employer), Mario Martinez, UFW (union)

Filing Date: May 23, 2014

Summary: Writ of Review of Board's decision and order in 40 ALRB No. 4.

Description: On May 23, 2014, Tri-Fanucchi Farms filed a petition for writ of review of the Board's decision in 40 ALRB No. 4, in which the Board upheld the ALJ decision finding a refusal to bargain. The employer challenges the union's status as certified exclusive representative. The certified record was filed with the court on June 12, 2014. Employer filed its opening brief on June 25, 2014. The Board requested an extension of time to file its opening brief, which was opposed by the Employer, and denied by the court. Employer's opening brief filed June 25, 2014. On July 30, 2014, petitioner filed a letter brief addressing whether this proceeding should be expedited over other civil cases pending before this court. On July 30, 2014, the UFW filed its responsive brief.

Status and Last Action Date: The matter is fully briefed.

California Superior Courts

Gerawan Farming, Inc. v. ALRB, et al.,

Fresno County Superior Court Case No 13-CECG-03374

Assigned Counsel: Deputy Attorney General Nelson Richards

Other Counsel: David A. Schwarz

Filing Date: October 28, 2013

Summary: Writ of mandate (1st Amendment challenge to MMC; public participation issue)

Description: On October 28, 2013, Gerawan filed an action in Fresno County Superior Court against the Board, its individual members, and its Executive Secretary, in which Gerawan claims that the Board violated the U.S. and California Constitutions by denying a worker's request to attend MMC sessions between Gerawan and the UFW. The lawsuit seeks a declaration that the Board's August 21, 2013 decision and order is unconstitutional, a declaration that the MMC proceedings conducted pursuant to the Board's April 16, 2013 decision and order are null and void, orders for preliminary and permanent injunctive relief, and for damages, costs, and attorney fees.

The Board's filed its demurrer on December 17, 2013. Gerawan filed its opposition on February 5, 2014. After continuances, the court heard the Board's demurrer on March 13, 2014, and then allowed supplemental briefing, which was filed on March 20, 2014.

On December 20, 2013, Lupe Garcia filed a motion to intervene in the case, alleging that his individual rights had been denied. The court granted the motion and the Board filed its opposition to the motion to intervene on January 8, 2014. On June 2, 2014, the court in a tentative decision granted the demurrer without leave to amend and the motion to strike, separately finding that the complaint was untimely (Lab. Code, § 1164.5), the court lacked jurisdiction to hear the matter (Lab. Code, § 1164.9), and the Board has immunity from liability for the 42 U.S.C. section 1983 action. On the motion to strike, the court ruled certain allegations impermissibly expanded the complaint. After hearing, on June 3, 2014, the court took the matter under submission.

Status and Last Action Date: On May 15, 2014, the court granted the Board's demurrer to Gerawan's lawsuit, without leave to amend, for lack of jurisdiction and immunity from suit. By minute order of July 7, 2014, the court affirmed the dismissal of the motion to intervene. ER appealed decision.

5. GENERAL COUNSEL REPORT:

- a. Unfair Labor Practice Activities Report – General Counsel Attorney Jorge Gaitan presented the General Counsel’s report to the Board. He reported the General Counsel is meeting with her Gerawan team in Visalia and will be returning to the office today.

There are approximately 200 unfair labor practice charges currently being processed by the General Counsel’s Office and six hearings are scheduled. The General Counsel’s staff has been working diligently on Gerawan (2013-RD-003-VIS). The General Counsel is working with the Department of Labor and the Labor and Workforce Development Agency (LWDA) to obtain additional staff. Due to her efforts five additional positions were authorized. To date, two of the positions have been filled and those individuals are working on the Gerawan case. The General Counsel is working diligently to fill vacancies.

Mr. Gaitan further reported that the General Counsel believes the restructuring of administration is causing problems. Her staff has taken on a lot of extra work from administration. In addition to a heavy workload, a good amount of work is being handled by the General Counsel Unit to assure quick hiring.

Chairman Gould expressed surprise that the General Counsel was handling extra work due to the reorganization of administration. It is his understanding that the exact opposite is true. The reorganization has contributed to a focus inside the administration unit which has made us more efficient. Mr. Gould encouraged the General Counsel to work with the Chief of the Administration unit to further the process.

- b. Outreach Activities Report—The General Counsel sent Cristina Peña to the Mexican Consulate at the end of August during Labor Rights Week. Approximately 20-40 participants received materials. Member Rivera-Hernandez and Supervising Assistant General Counsel Blanco attended the opening ceremonies for Labor Rights Week at the Mexican Consulate. Ms. Rivera-Hernandez had a long discussion with the Consulate General who expressed interest in meeting with the Board to learn more about our processes. Cristina Peña and Jorge Gaitan also presented at two AgSafe events.

- 6. CHIEF OF ADMINISTRATION REPORT** – The Chief of Administration was not available to provide a report.

7. SPECIAL PROJECTS

- a. **Education/Outreach:** See Outreach Activities Report above.
- b. **Annual Report** – The report is pending the General Counsel’s verification of information concerning the number of charges received and processed and the number of complaints issued. The Executive Secretary spoke with Cristina Peña on September 16, 2014, and requested that she follow up with the General Counsel and Ed Blanco regarding this information. Also, the information on AERF needs to be completed.
- c. **Mandatory Mediation and Conciliation (MMC) Training Event – January 22, 2015** – See Chairman’s report above

8. **REGULATIONS** – Nothing to report.

9. **LEGISLATION** – Legislative proposals, if any, are due October 6, 2014.

10. **PERSONNEL** – Marilu Garcia, Katie Nguyen and Susana Naranjo have separated from the agency. New hires include: Field Examiner Leslie Zaragoza, Attorney Theresa, Bichsel and Attorney Franchesca Herrera in the Salinas Regional Office; Field Examiner Erica Fernandez-Zamora in the Oxnard Subregional Office; Attorney Arcelia Hurtado in the Visalia Regional Office; and Hearing Officer Thomas Sobel in Sacramento. The Board was fortunate to have intern Steven Spriggs from Stanford Law School during the summer, and currently interns Kwan Park from Stanford Law School, Tyler Maffia from UC Davis School of Law, and Savannah Mendoza from McClatchy High School/Sacramento City College to assist the Board and Executive Secretary.

11. **Announcements** – None.

The public meeting adjourned at 10:34 a.m.