

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**November 19, 2014**

Time: 9:30 a.m.  
Members Present: Chairman Gould, Members Shiroma and Rivera-Hernandez  
Staff Present: Acting Executive Secretary Starkey; Board Counsel Heyck, Dixit and Inciardi; and Analyst Massie  
Others Present: Chief of Administration Saldivar; Assistant General Counsel Peña; Frances Low, California State Senate; and Legal Intern Tyler Maffia  
LWDA Staff: Jay Sturges, April Kline and Vianey Garcia.

**OPEN SESSION**

- 1. Approval of Minutes:** Board approved July 16, 2014 minutes on a 3-0 vote and tabled approval of September 17, 2014 minutes.
- 2. Public Comment:** None.
- 3. Chairman's Report:**

We are almost five months into the fiscal year. The Acting Executive Secretary will report on the Board's work on many cases since our last Board meeting in September.

The ALRB is one of the agencies that is undergoing an electronic conversion to the statewide FI\$CAL accounting and budgeting system from our previous in-house accounting and external CalSTARS system. Chief of Administration Nickolas Saldivar will report on that progress.

In looking ahead already to July and in particular at the budget needs for conducting unfair labor practice, election related, and compliance hearings, we foresee needing and using all resources budgeted.

Also looking ahead to 2015, and in response to the Senate Rules Committee, the Chairman shared that the workload within the ALRB has been increasing dramatically in recent years. In addition to the increasing volume of cases, the Board's

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Administrative Law Judges and the non-legal staff are confronting changes in the size and the complexity of the cases. The Department of Finance's Office of State Audits and Evaluations is wrapping up a workload study to assist us in quantifying and requesting additional resources for next year, and beyond.

#### Chair's Report on Department of Finance Audit

On November 21, 2014, the Department of Finance will conduct an exit conference to discuss the results of the recent audit of the Agricultural Labor Relations Board, conducted by the Department of Finance, Office of State Audits and Evaluations. The conference will be held at 11:00 a.m. in the Redwood Room at 915 L Street, Sacramento, CA. The offices of the Board, General Counsel and Administration will be in attendance.

#### Mandatory Mediation & Conciliation (MMC) Information Session

The half-day training session to inform stakeholders about the MMC process previously scheduled for January 22, 2015, in Sacramento is now being rescheduled to another date as several of the participants are involved in an ongoing election hearing and are unable to participate.

#### New Appointments/Separations

On October 28, 2014, Chairman Gould announced the appointment of Eduardo Blanco as Special Legal Advisor to the Chairman. Mr. Blanco will be focusing on rulemaking initiatives. Mr. Blanco officially served the ALRB for three and one-half decades. Chairman Gould also announced the appointment of Samantha Cooper who will serve as assistant to the Chairman. Sonia Louie joined the Executive Secretary's staff this week and will serve as Legal Secretary to the Executive Secretary, Special Counsel, and Administrative Law Judges. Nickolas Saldivar has been appointed head of Administration. Mr. Gould expressed his pleasure that this important appointment has been made and congratulated Mr. Saldivar and the department on having his valuable services. This is Davis Law School intern Tyler Maffia's last Board meeting, Mr. Maffia's services were much appreciated.

Separations include Field Examiner Salvatore Alatorre, Personnel Specialist Kris Kaney; and Administrative Law Judge James Wolpman. The Chairman thanked Mr. Wolpman for his many years of service to the ALRB.

#### Legislation

Senate Bill 25, which emerged from the Senate in late summer, was passed by legislature, and subsequently voted by the Governor, would have provided the Board

with the ability to enforce a mandatory mediation agreement prior to judicial review. The Governor's veto message calls for a comprehensive approach. See message, below, under Legislation.

### **3. Executive Officer Report**

#### **ELECTION REPORT**

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

No new NAs or NOs have been filed during this reporting period.

#### **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 hearing on the consolidated election objection and unfair labor practice amended consolidated complaint, as directed by the Board in Administrative Order No. 2014-27, commenced on September 29, 2014, and is in now in its 8<sup>th</sup> week of hearing.

#### **COMPLAINT REPORT**

#### **COMPLAINTS ISSUED**

##### **Arnaudo Brothers, LP, 2013-CE-028-VIS**

On September 24, 2014, the General Counsel issued a First Amended Consolidated Complaint.

##### **Silent Springs, LLC, 2013-CE-059-SAL**

On October 22, 2014, the Regional Director for the Salinas Regional Office issued a complaint against Silent Springs, LLC. The complaint alleges that the respondent unlawfully terminated 13 named charging parties and others for engaging in protected concerted activity, i.e., a group of workers were seeking to adjust the hourly wage for harvesting strawberries.

## **COMPLAINTS WITHDRAWN**

None.

## **HEARINGS IN PROGRESS**

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

The hearing commenced on September 29, 2014 and is still in progress.

## **TWO HEARINGS SCHEDULED**

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

The mandatory settlement conference is scheduled for November 24, 2014.

The depositions of Thomas McMillan and Robert Murray are continued and as of yet unscheduled.

The hearing is scheduled for December 15, 2014.

### **Herbco International, Inc., 2014-CE-001-VIS (3 days)**

Respondent is to advise the Executive Secretary by January 5, 2015 of a key witness' availability to testify on January 27, 2015.

The hearing is scheduled for January 27, 2015.

## **HEARINGS HELD**

### **Arnaudo Brothers, 2012-CE-028-VIS**

The hearing was held October 14 and 15, 2014.

### **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. A hearing was held on October 14, 2014, and then continued until such time when a necessary witness is available to testify.

## **CASES SETTLED AT HEARING**

None.

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

### **Arnaudo Brothers, 2012-CE-028-VIS**

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The post-hearing briefs are due November 28, 2014.

**California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms,  
2012-CE-044-VIS**

The hearing commenced on September 23, 2014, and ended on September 24, 2014. The post-hearing briefs were filed October 30, 2014. The ALJ's decision is pending.

**ALJ/IHE DECISIONS ISSUED**

None.

**CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:**

None.

**CASES PENDING BOARD DECISION OR ACTION:**

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

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

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

On November 12, 2014, the General Counsel filed a supplement to her October 24, 2014 request for leave to seek court order requiring compliance with notice in lieu of subpoena duces tecum.

**CASES REFERRED TO COMPLIANCE**

None.

**COMPLIANCE CASES CLOSED:**

None.

**BOARD DECISIONS/ADMINISTRATIVE ORDERS:**

The Board has issued four board decisions and 16 administrative orders since its last meeting.

**BOARD DECISIONS**

**Arnaudo Brothers, 2013-MMC-001**

On October 3, 2014, the Board remanded this matter to the Mediator for further proceedings and issuance of a second report pursuant to Labor Code section 1164.3, subdivision (c). 40 ALRB No. 9.

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

On October 15, 2014, the Board issued its decision in George Amaral Ranches, Inc., 2013-CE-033-SAL. 40 ALRB No. 10. Any petition for writ of review was due November 14, 2014.

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

On October 30, 2014, the Board issued its decision in Kawahara Nurseries, Inc., 2011-CE-004-SAL. 40 ALRB No. 11. Any petition for writ of review is due November 28, 2014.

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

On November 13, 2014, the Board issued its decision in Gurinder S. Sandhu dba Sandhu Poultry and Farming, 2012-CE-010-VIS. 40 ALRB No. 12. Any petition for writ of review is due December 12, 2014.

Member Shiroma noted these were very diverse decisions.

## **ADMINISTRATIVE ORDERS**

The following administrative orders can be found on the ALRB website at [www.alrb.ca.gov](http://www.alrb.ca.gov).

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

On September 17, 2014, the Board issued an order to report on the status of investigation of unfair labor practice charges relating to election objections. Admin. Order 2014-26.

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

On September 19, 2014, the Board issued an order to sever amended consolidated complaint and expedite hearing of election objections. Admin. Order 2014-27.

**Arnaudo Brothers, LP, et al., 2013-CE-029-VIS, et al.**

On September 22, 2014, the Board granted General Counsel's request for leave to seek court order requiring compliance with subpoena. Admin. Order 2014-28.

**Arnaudo Brothers, LP, et al., 2013-CE-029-VIS, et al.**

On September 24, 2014, the Board issued an order denying Respondents' request to withdraw the Board's order granting the General Counsel leave to seek court order requiring compliance with subpoena. Admin. Order 2014-29.

**Arnaudo Brothers, LP, et al., 2012-CE-030-VIS, et al.**

On October 15, 2014, the Board issued an order granting UFW's application for special permission to appeal ALJ's decision denying request for consideration of makewhole remedy. Admin. Order 2014-30.

**Perez Packing, Inc., 2014-MMC-002**

On October 21, 2014, the Board issued an order granting the UFW's request to withdraw request for mandatory mediation and conciliation. Admin. Order 2014-31.

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

On October 24, 2014, the Board issued an order denying General Counsel's application for special permission to appeal the exclusion of evidence based on disputed issues. Admin. Order 2014-32.

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

On October 24, 2014, the Board issued an order denying Respondent's request for special permission to appeal ALJ's order regarding the General Counsel's notice in lieu of subpoena. Admin. Order 2014-33.

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

On October 27, 2014, the Board issued an order denying General Counsel's request for special permission to appeal ALJ's order striking expert witness. Admin. Order 2014-34.

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

On October 29, 2014, the Board issued an order denying General Counsel's request for hearing date. Admin. Order 2014-35.

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

On October 29, 2014, the Board issued an order denying Respondent's request for special permission to appeal order of the ALJ partially denying petition to revoke subpoena duces tecum. Admin. Order 2014-36.

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

On October 31, 2014, the Board issued an order rejecting the General Counsel's request for board action in four pending special appeals. Admin. Order 2014-37.

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

On November 5, 2014, the Board issued an order denying Respondent's application for special permission to appeal regarding introduction of Jorge Rueda's testimony and request for clarification. Admin. Order 2014-38.

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

On November 6, 2014, the Board issued an order denying General Counsel's application for permission to appeal ALJ's order granting motion to dismiss and order clarifying role of General Counsel in Compliance Hearing and Settlement. Admin. Order 2014-39.

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

On November 17, 2014, the Board issued an order denying General Counsel's motion for reconsideration of the Board's decision issued on October 30, 2014, regarding General Counsel's inaccurate assertion that the Board found that Mr. Jimenez was unlawfully laid off. Admin. Order 2014-40.

**Ace Tomato Co., Inc., 93-CE-37-VI**

On November 18, 2014, the Board issued an order responding to the October 8, 2014 UFW Objection to a Settlement Conference; General Counsel's November 3, 2014 Request for Ruling on Said Objection; Ace Tomato's November 5 and 7, 2014 Requests for Clarification; General Counsel's November 10, 2014 Motion for Reconsideration; and Ace Tomato's November 10, 2014 Motion to Strike. Admin. Order 2014-41.

**Ace Tomato Co., Inc., 93-CE-37-VI**

On November 18, 2014, the Board issued an order denying General Counsel's request to set a hearing date, and directing the Executive Secretary to exercise his judgment and expertise to schedule all pending matters as soon as practicable and in keeping with the Board's orders and policies. Admin. Order 2014-42.

**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 filed his supplemental report and both the Employer and the Union filed petitions for review of that report. On October 3, 2014, the Board remanded this matter to the Mediator for further proceedings and issuance of a second report pursuant to Labor Code section 1164.3, subdivision (c). 40 ALRB No. 9.

The parties are now discussing proposed dates to discuss the matters raised by the Board's October 3, 2014 decision.

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 October 10, 2014, the UFW filed a request to withdraw its request for mandatory mediation and conciliation as the parties had reached a comprehensive agreement. That request was granted on October 21, 2014. This matter is now fully resolved.

## **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. By order dated October 3, 2014, and after statements by the parties, the court directed that the appeal is not selected for mediation. Briefing on appeal is in progress, with the brief of the Board defendants due on December 1, 2014; Ms. Lopez's opposition brief is due December 30, 2014.

### **Federal District Court**

► ***Lopez v. Shiroma, et al.*, 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:** 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. By order dated September 23, 2014, the court granted the ALRB's motion to enforce stay of proceedings pending the appeal and denied plaintiff's motion to appoint a special expert master.

## California Appellate Courts

### Fifth District Court of Appeal

► *Ace Tomato Company, Inc.*, Fifth District Court of Appeal No. [F065589](#)  
38 ALRB No. 6 (2013)

**Assigned Counsel:** Scott Inciardi, Senior Board Counsel

**Other Counsel:** Robert K. Carroll, Nixon & Peabody (employer); Mario Martinez, Marcos Camacho Law Firm (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 in the 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 opposed 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 place 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. As of November 18, 2014, 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 (2013)**

**Assigned Counsel:** Laura Heyck, Senior Board Counsel

**Other Counsel:** Spencer Hipp, Littler (employer); Mario Martinez, Marcos Camacho Law Firm (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 Fifth District Court of Appeal. 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. On August 7, 2014, the Court granted Employer's request to file brief in excess of 50 pages.

**Status and Last Action Date:** The Board and the UFW filed opposition briefs on June 30, 2014. The Employer's reply brief was filed on August 25, 2014. The matter fully briefed and pending court decision.

► *Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. [F068526](#)*

**39 ALRB No. 17 (2013)**

**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, Marcos Camacho Law Firm (union); Scott Alan Kronland, Altshuler Berzon (union); Luke A. Wake, (NFIB Small Business Legal Center, amicus); Anthony Caso (Western Growers Assn., amicus); Anthony P. Raimondo (Silvia Lopez, 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 Fifth District Court of Appeal 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). The UFW and the Board filed separate response to amici briefs on May 27 and May, 28, 2014, respectively.

**Status and Last Action Date:** As of May 28, 2014, the matter is briefed and pending court decision. On September 23, 2014, the court *sua sponte* asked the parties to report about mediation and settlement, to which the parties replied by separate letters. On November 3, 2014, the court asked for briefing by December 7 on three questions relating to the impact of the ongoing administrative hearing relating to the Gerawan election dispute and the impounding of ballots.

► ***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, Marcos Camacho Law Firm (union).

**Filing Date:** January 15, 2014

**Summary:** Appeal from Fresno County Superior Court 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

**Status and Last Action Date:** The Employer filed its opening brief on June 13, 2014. The ALRB's brief WAS FILED on August 7, 2014. The UFW brief was filed August 19, 2014. The Employer's reply brief was filed September 9, 2014. On September 23, 2014, the court *sua sponte* asked the parties to report about mediation and settlement, to which the parties replied by separate letters. As of October 13, 2014, the matter is fully briefed and pending decision.

► ***Perez Packing, Inc., Fifth District Court of Appeal No. [F068697](#)***  
**39 ALRB No. 19 (2013)**

**Assigned Counsel:** Raj Dixit, Senior Board Counsel

**Other Counsel:** Ronald Barsamian, Barsamian & Moody (employer), Mario Martinez, Marcos Camacho Law Firm (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. On September 24, 2014, the court notified the parties of the right to request oral argument. Upon separate requests of the parties for oral argument, the court had set hearing for November 5, 2014, in Fresno, which was continued on the court's own motion to January 27, 2015.

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

**Assigned Counsel:** Scott Inciardi, Senior Board Counsel

**Other Counsel:** Howard Sagaser (employer), Mario Martinez, Marcos Camacho Law Firm (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 brief, which was opposed by the Employer, and denied by the court on July 25, 2014. On July 25, 2014, the court also requested letter briefing by August 13, 2014, on whether the case should be expedited. The Employer filed its letter brief on July 30, 2014. The Board's letter brief on expediting the case was filed on August 13, 2014. (As of September 30, 2014, the UFW had not filed its letter brief.) On July 18, 2014, Employer filed a motion to augment record, which the ALRB and the UFW separately opposed on August 4, 2014, and which the court denied on August 6, 2014. On July 22, 2014, the ALRB renewed its request to extend time to file opening brief, which the Employer opposed. The court granted the Board's request to extend the time of filing to 15 days after resolution of Petitioner's motion to augment the record.

**Status and Last Action Date:** The UFW filed its brief on July 30, 2014. The Board's brief and request for judicial notice of matters was filed on August 21, 2014. The Employer's reply brief was filed on September 15, 2014. The matter is fully briefed. The court allowed the UFW time to file a response on whether to expedite the matter pending court ruling on expediting case. On October 30, 2014, the court denied the request for expedited treatment. Pending court action.

► ***Gerawan Farming, Inc. v. ALRB, et al., Fifth District Court of Appeal No. [F069896](#)***

**Fresno County Superior Court Case No 13-CECG-03374**

**Assigned Counsel:** Deputy Attorney General Nelson Richards; Paul M. Starkey, Special Board Counsel

**Other Counsel:** David Schwarz, Irell & Manela (Employer); Paul Bauer, Walter & Wilhelm Law Group (intervenor)

**Filing Date:** August 15, 2014

**Summary:** Writ of mandate (First Amendment challenge to MMC; public participation issue).

**Description:** On July 16, 2014, Gerawan filed its notice of appeal.

**Status and Last Action Date:** Appeal in preliminary stages. Appellant is proceeding by clerk's and reporter's transcripts. On August 27, 2014, after responses from the parties, the court ruled the matter is not appropriate for mediation. On September 9, 2014, the court requested preparation of the record by court reporter's transcript. Appellant's opening brief due December 15, 2014.

► ***P & M Vanderpoel Dairy v. ALRB, et al., Fifth District Court of Appeal No. [F070149](#)***

**40 ALRB No. 8**

**Assigned Counsel:** Laura Heyck, Senior Board Counsel

**Other Counsel:** Howard Sagaser, Sagaser, Watkins & Wieland PC (Employer); Sylvia Torres Guillen, ALRB General Counsel; Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** September 26, 2014

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

**Description:** On September 26, 2014, P & M Vanderpoel filed its petition for review of 40 ALRB No. 8.

**Status and Last Action Date:** Record on appeal filed October 3, 2014. Employer brief due, scheduled as due November 7, 2014, not filed. Court to notify appellant.

### **Sixth District Court of Appeal**

► ***United Farm Workers (Corralitos Farms, LLC), Sixth District Court of Appeal***  
Case No. [H041113](#)

**40 ALRB No. 6**

**Assigned Counsel:** Raj Dixit, Senior Board Counsel

**Other Counsel:** Ana Cristina Toledo, Noland, Hamerly, Etienne & Hoss (employer), Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** June 18, 2014

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

**Description:** On June 18, 2014, petitioner United Farm Workers of America (UFW or Union) filed its petition for review.

**Status and Last Action Date:** The Board filed the administrative record on July 28, 2014. The UFW's opening brief due date was extended by stipulation from September 2, 2014, to October 2, 2014. The UFW then obtained another extension, and filed its opening brief on November 14, 2014. The Board's brief is due on December 19, 2014.

### **California Superior Courts**

► **Francisco Acheron v. ALRB, et al. (3<sup>rd</sup> DCA)**

**Sacramento County Superior Court Case No. 34-2014-00168939**

**Assigned Counsel:** Andrea Austin, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

**Other Counsel:** Paul A. Greenberg, Greenberg & Weinmann

**Filing Date:** September 15, 2014

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

**Description:** The action is against the ALRB, as a government agency, and named individual defendants for alleged harassment and retaliation arising from employment.

**Status and Last Action Date:** The matter has been assigned for representation. The time to respond is November 20, 2014.

**Fresno County Superior Court (5<sup>th</sup> DCA)**

► *Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et. al.*,  
**Fresno County Superior Court Case No. 13-CECG-01408**

**On Appeal: Fifth District Court of Appeal No. F08676**

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

**Other Counsel:** David Schwarz, Irell & Manella, LLP (employer); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** May 13, 2013

**Summary:** Action challenges the Board's April 16, 2013 order for mandatory mediation and conciliation.

**Description:** The action filed by Gerawan Farming, Inc. (Gerawan) claims the Board exceeded its authority when it ordered Gerawan to mandatory mediation and conciliation ("MMC") with the United Farm Workers of America ("UFW") on April 16, 2013. Gerawan further claims that the MMC process violates its constitutional due process rights and seeks a declaration that the MMC statutes are unconstitutional.

On May 17, 2013, Gerawan Farming filed an ex parte application to stay the Board's April 16, 2013 order directing the employer to engage in MMC with the union. On May 20, 2013, Tri-Fanucchi Farms filed a request to appear as amicus curiae on behalf of the petitioner. On May 24, 2013, the Board opposed both the request for stay and Tri-Fanucchi Farm's request to appear as amicus curiae. On May 24, 2013, the UFW also filed its opposition to Gerawan's Farming's request for stay. After hearing on June 10, 2013, the court denied the request for stay on June 19, 2013.

On June 18, 2013, the Board filed the certified record with the court. The Board filed its answer to the petition and complaint on June 20, 2013. On July 29, 2013, the Board filed its opposition brief to Gerawan's writ of administrative mandate.

**Status and Last Action Date:** The superior court denied the writ on September 26, 2013. Petitioner appealed. (See above.)

► ***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)**

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

**Other Counsel:** Paul Bauer, Walter & Wilhelm Law Group (Petitioner); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** May 17, 2013

**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).

**Description:** On May 17, 2013, Lupe Garcia, an individual worker employed by Gerawan, filed a petition and complaint, alleging the Board's April 16, 2013 order referring the parties to MMC (39 ALRB No. 5) is facially invalid under the Due Process Clause of the U.S. and California Constitutions. The petition also alleges that the Board's ruling violates the workers' First Amendment rights to freedom of speech and association, as well as equal protection rights. On August 7, 2013, Garcia asked the court to stay MMC proceedings pending resolution of his request to intervene in the MMC proceedings, which the court denied for lack of standing. On August 30, 2013, the Board filed its answer to the petition and complaint.

**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 in November 2014 have been vacated.

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

**On Appeal:** Fifth District Court of Appeal No. [F069896](#)

**Fresno County Superior Court Case No 13-CECG-03374**

**Assigned Counsel:** Deputy Attorney General Nelson Richards; Paul M. Starkey, Special Board Counsel

**Other Counsel:** David Schwarz, Irell & Manela (Employer); Paul Bauer, Walter & Wilhelm Law Group (intervenor)

**Filing Date:** October 28, 2013

**Summary:** Writ of mandate (First 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, which was entered as a judgment on July 25, 2014. On July 16, 2014, Gerawan filed its notice of appeal. On September 19, 2014, Lopez filed a separate appeal. (See above.)

## **5. GENERAL COUNSEL REPORT'S:**

- a. Unfair Labor Practice Activities Report – No report.
- b. Outreach Activities Report – No report.

## **6. CHIEF OF ADMINISTRATION REPORT**

**Mr. Saldivar reported, as follows:**

- Timely completed statute-mandated Cal HR annual reporting on bilingual services.

- Timely completed statute-mandated Cal Recycle annual report.
- Timely completed work analysis for DOF audit. Substantial amount of time required by administration. In Fiscal Wave 1 implementation. Trying to close July. Hoping to accomplish task within the next week or two. Starting Wave 2 preparation. scheduled for Wave 2. Service contracts will occur through Fiscal. Personnel preparing for end of year events. Moving forward with processes and policies.
- Mr. Saldivar acknowledged being named Chief of Administration, effective October 1, 2014. He thanked the Chairman for his kind words, saying he looked forward to working with the Board and General Counsel.

## 7. SPECIAL PROJECTS

**a. Education/Outreach** – Nothing to report.

**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 the Agricultural Employees Relief Fund needs to be completed.

**c. Mandatory Mediation and Conciliation (MMC) Training Report** – See Chairman’s report above.

## 8. REGULATIONS – Nothing new to report.

## 9. LEGISLATION –

SB 25 (Steinberg) vetoed September 28, 2014

As amended, this bill would allow for an action to enforce a Board ordered collective bargaining agreement reached through the MMC process within 60 days of the Board’s order regardless of whether a party seeks judicial review of the order in the appellate courts. This bill would require that the terms of the Board’s order be implemented where an order sought by the Board has been obtained while appellate review is pending. Where an action to enforce is filed, under this bill a court may only grant a stay where the appellant has (1) demonstrated by clear and convincing evidence that appellant will be irreparably harmed by the implementation of the Board’s order, and (2) demonstrated by clear and convincing evidence a likelihood of success on appeal. Finally, the bill requires the court deciding the stay to provide written findings and analysis supporting the decision to grant a stay.

The Governor stated in his veto message:

*This bill is designed to expedite prompt enforcement of contracts derived from mandatory mediations.*

*Both contract enforcement and election disputes should be dealt with so the process is balanced and fair. This bill only addresses contract enforcement. We should look at the entire process before making further changes.*

## **10. Personnel**

Hires and Separations, September 17, 2014-Present:

### Hires:

Tyler Maffia, Legal Intern, September 2014

Ed Blanco, Attorney IV, October 2014

Samantha Cooper, AGPA, November 2014

Sonia Louie, Legal Secretary, November 2014

### Separations:

Sal Alatorre, Field Examiner I, October 2014

Kristine Kaney, Limited Term Personnel Specialist, October 2014

James Wolpman, Administrative Law Judge, November 2014

## **11. Announcements – None.**

The next Board meeting is tentatively scheduled for January 21, 2015.

The public meeting adjourned at 10:15 a.m.