

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**Board Conference Room
342 Pajaro Street
Salinas, CA 93901**

May 22, 2013

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Salinas Staff—Acting Regional Director De La Cruz, Assistant General Counsel Arciniega and Martinez, Legal Counsel Marubayashi and Peña, Field Examiners Bueno and Centeno. Headquarters Staff via teleconference—Executive Secretary Barbosa, Board Counsel Heyck, Robinson and Inciardi; and Analyst Massie
Others Present: Ana C. Toledo, Esq., and Lynne Griffin, Ottone Leach Olsen & Ray LLP; Pete Maturino, Efrain Aguilera, and Della Garcia, United Food and Commercial Workers, Local 1096

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for April 3, 2013 were approved changes 3-0.
2. **Public Comment:** None.
3. **Chair's Report:** The Chair and General Counsel continue to review the department's budget as the end of the fiscal year approaches. On May 9, 2013, the Senate Budget Subcommittee 2 voted 2-1 to approve the ALRB's budget, with Chair Beall and Member Jackson approving, and Senator Nielsen dissenting. With this vote, the Board's budget is approved in both the Assembly and Senate budget committee processes and the next step is the floor vote in both houses. The Agricultural Labor Relations Board's budget is available online at <http://www.ebudget.ca.gov>, under the Labor and Workforce Development Agency.
4. **General Counsel's Report:** The General Counsel reported on the status of hearings, unfair labor practice charges, complaints, settlements and compliance activities in the regions. Acting Regional Director De La Cruz updated the Board on the distribution of funds in the Hess compliance matter. The General Counsel discussed renewing

various contracts and the development of specific policy manuals, as well as assistance the department is receiving with accounting from the Department of Industrial Relations.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Nothing new to report.

NOTICE OF INTENT TO ORGANIZE (NO)

Seven (7) NOs have been filed in the current fiscal year. Six of the seven have met the 10 percent showing of interest.

Filing Date	Filing Party	Employer	10% Met
07/09/12	UFW	Gargiulo, Inc.	Yes
08/04/12	UFW	Corralitos Farms, LLC	Yes
09/05/12	UFW	Corralitos Farms, LLC	Yes
09/10/12	UFW	T.T. Miyasaka, Inc.	Yes
09/10/12	UFW	Premiere Raspberries, LLC dba Dutra Farms	Yes
02/05/13	UFW	Gila Farm Land LLC	No
02/06/13	UFW	RBI Packing LLC & Gila Farm Land LLC	Yes

PENDING ELECTION MATTERS:

D'Arrigo Bros. of California, 2010-RD-004-SAL

On November 2, 2010, agricultural employee Alvaro Santos filed a decertification petition with the Salinas Regional Office seeking the ouster of the incumbent representative United Farm Workers (UFW) at D'Arrigo Bros. of California. The employer is located in Monterey and Imperial Counties and has 1,665 employees. An election was held on November 17, 2010, in Spreckles, Gonzalez and Calipatria, CA. The regional director impounded the ballots pending investigation of an unfair labor practice charge filed by the incumbent union UFW. The UFW filed objections to the election on November 24, 2010. On February 24, 2011, the Salinas Regional Director issued a complaint against D'Arrigo Bros. alleging that, since October 27, 2010 and continuing, the employer initiated, participated in, aided, and/or gave support to the decertification campaign against the certified union UFW. On March 11, 2011, the Executive Secretary issued his order on the UFW's election objections. Neither party

filed a request for review. On March 15, 2011, the Executive Secretary consolidated the election objections and unfair labor practice complaint as each had the same or some of the same basis for the petition and complaint. A prehearing conference was held on May 27-28, 2011 and a hearing was held from June 13, 2011 to September 7, 2011. The post-hearing briefs were filed January 23, 2011. On June 15, 2012, the Administrative Law Judge (ALJ) issued his decision in this matter. The employer filed exceptions to the ALJ's decision on August 28, 2012. On November 9, 2012, the Respondent/Employer, UFW and General Counsel filed their answering brief. On April 11, 2013, the Board issued its decision dismissing the decertification petition and setting aside the election. The Board also rejected the UFW's contention that referral to MMC is an available remedy in an unfair labor practice case. By this decision, the UFW retains its status as the certified bargaining representative of D'Arrigo's agricultural employees. On April 23, 2013, the employer filed a motion seeking reconsideration of the Board's decision in 39 ALRB No. 4, or reopening of the record, and a stay of the Board's decision. On May 3, 2013, the UFW and the General Counsel filed an opposition to the motion. On May 7, 2013 the Board denied the Respondent/Employer's motion. On May 10, 2013, D'Arrigo filed a petition for writ of review in the Fourth District Court of Appeal, Division One, requesting review of the decision of the Board's decision in D'Arrigo Bros. of California (2013) 39 ALRB No. 4. The certified record was sent to the court on May 21, 2013, by overnight delivery. See court litigation cases for further information.

Corralitos Farms, LLC, 2012-RC-004-SAL

On September 14, 2012, the United Farm Workers (UFW) filed a representation petition with the ALRB Salinas Regional Office seeking to organize the agricultural employees of Corralitos Farm in Watsonville CA. The employer grows strawberries in Monterey County and has approximately 360 employees. An election was held on September 19, 2012, with the following results:

UFW	154
No Union	187
Unresolved Challenged Ballots	<u>19</u>
Total	360

The number of unresolved challenged ballots is insufficient to affect the results of the election. The UFW filed objections to the election on September 26, 2012. On October 16, 2012, the Board issued its decision on election objections. The Board set 15 of the UFW's 17 objections for an investigative hearing, and set two objections for hearing conditioned on the outcome of the investigation of two unfair labor practice (ULP) charges currently pending before the General Counsel. The investigative hearing that began on November 15, 2012 closed on December 11, 2012. On February 1, 2013 the parties submitted a joint stipulation extending the due date for the post-hearing briefs up to and including February 18, 2013 and the issuance of the ALJ's decision on the consolidated ULP and election objection case up to and

including March 1, 2013. On February 4, 2013, the Executive Secretary approved the stipulation. The General Counsel, UFW and Respondent filed their post-hearing briefs on February 19, 2013. The ALJ issued his decision on March 1, 2013. On March 19, 2013 the Executive Secretary granted the UFW and General Counsel's joint request for an extension of time to file exceptions to the ALJ's decision. Both the UFW and the General Counsel filed exceptions to the ALJ's decision on April 4, 2013. The employer's reply to exceptions briefs was filed April 25, 2013. The Board's decision is due by June 10, 2013. On April 25, 2013, the employer also filed a motion to strike portions of the briefs of the General Counsel and UFW. A decision on the motion is pending.

COMPLAINT REPORT

COMPLAINTS ISSUED

The General Counsel issued five complaints since our last board meeting.

Nakamura Sales Corporation, 2012-CE-017-SAL, et al.

On May 9, 2013, the Region issued a complaint that alleges that the employer: 1) interrogated employees about their union activities; 2) placed employees under surveillance; 3) threatened the UFW's Vice President with violence in the presence of employees if the Vice President did not leave the crew during access; 4) coerced and restrained employees by stopping them from working during work hours and ordering them to participate in anti-union activity; 5) discriminatorily prohibited pro-union employees from engaging in union activity during work hours; and 6) threatened that pro-union employees would not be re-hired in the future and that the employer would close its business if the UFW won an election.

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

On May 13, 2013, the Region issued a complaint that alleges that the employer interfered with, restrained, and coerced employee Elvia Hernandez in the exercise of her protected rights by terminating her in retaliation for making complaints about her terms and conditions of employment, including about sexual harassment against female employees.

Arnaudo Brothers, LP, 2012-CE-030-VIS:

On May 9, 2013, the Region issued a complaint in the case that alleges that the employer: 1) failed to provide relevant and accurate employee information to the bargaining representative, UFW, thereby unlawfully refusing to bargain in good faith; 2) refused to make itself available for bargaining at reasonable times for the purpose of negotiations, thereby unlawfully refusing to bargain in good faith; and 3) by failing to provide information and by refusing to bargain in good faith, interfered with and restraining employees in the exercise of their rights under the Act.

D'Arrigo Bros. of California, 2012-CE-005-SAL

On May 9, 2013 the Region issued a complaint in the case that alleges that: 1) the employer proposed and insisted that the UFW agree to amend the bargaining unit from its original Board certification to exclude and discriminate against workers on the basis that they were hired through a farm labor contractor, thereby refusing to bargain in good faith; and 2) by seeking to exclude employees from the benefits of a collective bargaining agreement and union membership and by insisting on such exclusions in the presence of employees, the employer unlawfully interfered with and restrained employees in the exercise of their rights under the Act.

Gerawan Farming, Inc., 2013-CE-010-VIS

On May 17, 2013, the Region issued a complaint that alleges that the employer: 1) unlawfully refused to bargain with the certified union by proposing and insisting that agricultural employees included in the Board certification be excluded from the terms of any collective bargaining agreement (CBA) based on being hired through a farm labor contractor ("FLC"); and 2) unlawfully restrained and coerced its employees by seeking to exclude employees hired through a FLC, telling its agricultural employees that it wanted to exclude such employees from all provisions of the CBA, and by insisting that the union agree to an unlawful contract proposal.

COMPLAINTS WITHDRAWN

None.

**PREHEARING, HEARING OR SETTLEMENT CONFERENCES
SCHEDULED:**

HEARINGS SCHEDULED

Ace Tomato Company, Inc., 93-CE-37-VI (makewhole case)

On May 13, 2013, the ULP hearing date was vacated and the matter was taken off calendar.

Ace Tomato Company, Inc., 2012-CE-007-VIS (alleged refusal to provide information)

On May 13, 2013, the ULP hearing date in Case No. 93-CE-37-VI was vacated and the matter was taken off calendar. As this case (2012-CE-007-VIS) was to follow the makewhole case, this case too was taken off calendar.

HEARINGS TO BE SCHEDULED

The Executive Secretary is in discussion with the Regional offices to schedule four of the five complaints recently issued by the Regional Offices.

HEARINGS IN PROGRESS

None.

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

H&R Gunland Ranches, Inc., 2009-CE-063-VIS, et al.

The matter is pending the ALJ's decision.

Perez Packing, Inc., 2012-CE-003-VIS

The matter is pending the ALJ's decision.

ALJ/IHE DECISIONS ISSUED:

Bud Antle, Inc., 2012-CE-007-SAL (alleged refusal to provide information)

The ALJ issued his decision on May 22, 2013. Exceptions to the decision are due June 14, 2013. The reply briefs are due June 27, 2013.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

CASES PENDING BOARD DECISION OR ACTION:

Premiere Raspberries, LLC, 2012-CE-003-SAL

Exceptions filed February 11, 2013.

Replies filed February 25, 2013.

Corralitos Farms, LLC, 2012-RC-004-SAL

Exceptions filed April 4, 2013.

Replies filed April 25, 2013.

George Amaral Ranches, Inc., Case No. 2012-CE-069-SAL, et al.

On May 16, 2013, the General Counsel filed a request for leave to seek court order requiring compliance with investigative subpoena. On May 21, 2013, the Board issued an order setting the due date for responses as May 28, 2013. The matter is pending responses from the parties and a decision from the Board.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Gerawan Farming, Inc., 2013-MMC-003

On April 16, 2013, the Board issued its decision referring the parties to mandatory mediation and conciliation.

D'Arrigo Bros. of California, 2010-RD-004-SAL

On May 7, 2013, the Board denied the Respondent/Employer's motion for reconsideration, motion for re-opening and the request for stay.

George Amaral Ranches, Inc., Case No. 2012-CE-069-SAL, et al.

On May 16, 2013, the General Counsel filed a request for leave to seek court order requiring compliance with investigative subpoena. On May 21, 2013 the Board issued an order setting the due date for responses as May 28, 2013.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

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

On November 17, 2011, the UFW filed a declaration requesting mandatory mediation and conciliation. On November 22, 2011, the employer filed its answer and opposition to the motion. On December 2, 2011, the Board issued an order to show cause why it should not dismiss the union's request for failure to show that the parties have not previously had a binding contract between them. The union's response was filed December 13, 2011. The employer's reply was filed December 21, 2011. On December 23, 2011, the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011, the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012, in Modesto CA. On January 18, 2012, the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. On January 25, 2012, the UFW filed a request for ruling on the pleadings. On January 26, 2012, the employer filed its opposition to that request. On January 27, 2012 the Board denied the UFW's request. The hearing on the MMC matter was held on February 8, 2012. Post-hearing briefs were received February 23, 2012. On March 19, 2012, the employer filed exceptions to the ALJ decision. Reply briefs are not provided for in the Board's regulations. On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (See 38 ALRB No. 2.) On April 3, 2012, the California State Mediation and Conciliation Service issued its list of nine mediators in accordance with Labor Code section 1164, subdivision (b). On April 10, 2012, the parties selected Matthew Goldberg as the mediator/arbitrator in this case. The mediator has issued his report to the Board and the official record in the case, which were received by the Board on July 17, 2012. According to the Board's regulations, the parties may file a petition for review of the

mediator's report within seven (7) days. The petition for review was received July 26, 2012. On August 3, 2012, the Board issued its decision granting review on two matters. The first matter is a possible math error as to the amount of picking rate increases and the second matter is the inclusion of tractor drivers in the bonus program. As to the other matters to which San Joaquin Tomato Growers, Inc. objected, the Board found that the mediator's conclusions were neither clearly erroneous, nor arbitrary or capricious, and went into effect as of the decision issuance date and are not in abeyance. The Mediator's revised report following the Board's decision was filed September 22, 2012. The parties' petition for review of that report was due October 4, 2012. Neither party filed a petition for review. The Board issued its decision on this matter on October 9, 2012. On November 8, 2012 the petitioner, San Joaquin Tomato Growers, Inc., filed a petition for writ of review and requested an immediate stay. On November 16, 2012 the ALRB filed its opposition to the request for stay. On November 28, 2012 the Board filed the certified record. The Petitioner's opening brief was filed February 1, 2013. The Board's response brief was filed March 18, 2013. The UFW's brief was filed March 19, 2013. Petitioner's reply brief was filed May 10, 2013. The matter is now pending oral argument or decision.

George Amaral Ranches, Inc., 2012-MMC-003

On November 20, 2012, the Board issued an order directing the United Farm Workers of America (UFW) and George Amaral Ranches, Inc. (Employer) to participate in the mandatory mediation and conciliation process set forth in Labor Code sections 1164-1164.13 and sections 20400-20408 of the Board's regulations. The UFW was first certified as the exclusive collective bargaining representative on July 24, 2012. The UFW filed its declaration requesting mandatory mediation and conciliation on November 9, 2012, and the Employer did not file an answer to the UFW's request. On December 3, 2013, Annie Song-Hill, Interim Chief of California State Mediation Services, informed the parties that Matthew Goldberg has been informed that he has been selected by the parties as the mediator in this matter. The parties have participated in ten (10) negotiation sessions and met with the mediator in three (3) sessions. Mediation in Amaral is now complete. According to the mediator, final submissions have not been forwarded to him and the parties have yet to provide stipulations re: size, scope of company operations, bargaining history and wage history. Until that information is received, the mediator is unable to issue his report.

Arnauado Brothers, Inc., 2013-MMC-001

On February 4, 2013, the UFW filed a declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Arnauado Brothers, Inc. to mandatory mediation and conciliation. Arnauado Brothers grows tomatoes and other crops in San Joaquin County. The employer's response was received on February 8, 2013. On February 13, 2013 the Board granted the UFW's request and issued an order directing the parties to mandatory mediation and conciliation. The parties have selected Matthew Goldberg as the mediator/arbitrator in this case and a mediation session is scheduled for Friday, May 24, 2013.

Gerawan Farming, Inc., 2013-MMC-003

On March 30, 2013, the UFW filed a second amended declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Gerawan Farming, Inc. to mandatory mediation and conciliation. Gerawan Farming is engaged in the growing of stone fruits, including peaches, plums, nectarines and apricots. At the time of the election in 1990, Gerawan Farming had approximately 1331 employees. The UFW was certified at the company on July 8, 1992 and has requested bargaining with the employer in July 1992, November 1994 and October 12, 2012. On April 8, 2013, the employer filed an answer to the MMC petition alleging that the statutory requirements for filing an MMC petition had not been met and that the petition should also be dismissed based on defenses of laches, estoppel, waiver, bad faith, unclean hands and abandonment as well as statutory, equitable and constitutional grounds. The matter is pending decision by the Board. On April 16, 2013, the Board issued its decision referring the parties to mandatory mediation and conciliation. On April 24, 2013, the California Mediation and Conciliation Service prepared and sent the parties a list of nine mediators. The parties selected Matthew Goldberg as the mediator. The parties exchanged their positions on the remaining open issues on May 7, 2013, and submitted their discovery requests on May 13 and 15, 2013. The parties agreed to exchange their responses on May 29, 2013. The parties are meeting with the mediator on June 6 and 11, 2013 in Modesto California. Gerawan is seeking to stay the MMC procedures and the Fresno Superior Court will hear Gerawan's request for a stay on June 5, 2013.

COURT LITIGATION:

ALRB v. Ace Tomato Co., Inc., Case No. 39-2012-00287876-CU-PT-STK (San Joaquin County Superior Court)

On October 4, 2012, the General Counsel was granted leave by the Board to seek enforcement of two outstanding investigative subpoenas related to three unfair labor practice charges against Ace Tomato Co., Inc. On October 5, 2012, she filed an ex-parte Application for enforcement of the subpoenas in San Joaquin Superior Court in Stockton, CA. The Ex-Parte hearing was calendared for 8:15 a.m. on October 9, 2012 in front of Judge Linda Lofthus. Ace sought to have the matter transferred to Judge Barbara Kronlund, arguing that the present subpoena enforcement action was substantially related to a prior temporary restraining order application heard by Judge Kronlund. Both parties met initially with Judge Lofthus in chambers. However, after a break in which Judge Lofthus conferred with Judge Kronlund, the matter was transferred to Judge Kronlund. Judge Kronlund refused to hear the matter ex-parte and set a hearing on shortened time for October 24, 2012. After Ace represented to the Court that all matters were stayed based on the October 17, 2012 stay order issued by the 5th District Court of Appeal in Case No. F065589, Judge Kronlund removed the matter from calendar, without proper notice to the ALRB. On October 22, 2012, the General Counsel filed an Opposition to the Respondent's Notice of Stay of the

Proceedings to Enforce the General Counsel's subpoenas. There has not yet been a response from the Court to the General Counsel's opposition.

Ace Tomato Company, Inc., F065589

On August 23, 2012 Ace Tomato Company (Ace) sought court review of the Board's decision in 38 ALRB No. 6 by filing a petition for writ of review with the Fifth Appellate District Court of Appeals. In 38 ALRB No. 6, pursuant to the Mandatory Mediation and Conciliation provisions of the Agricultural Labor Relations Act, the Board affirmed in full Mediator Matthew Goldberg's report fixing the terms of a collective bargaining agreement between Ace and the United Farm Workers of America (UFW), the certified representative. Ace also requested a stay of the Board's decision. The Board and UFW both filed a 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 3rd District Court of Appeal. 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 5th District Court of Appeal issued two orders. One order denied the ALRB's and UFW's request to transfer the case to the 3rd District Court of Appeal, without prejudice to filing a request directly with the California Supreme Court. The other order granted Ace's request that the Board's decisions before the court on review be stayed pending further order or determination of the merits of Ace's petition for writ of review. On October 25, 2012, the UFW filed an opposition to Ace's motion to augment the record and the ALRB filed a response joining in the UFW's opposition. On October 30, 2012, the Board filed with the 5th DCA a petition for rehearing on proper venue. On November 14, 2012, the Board filed its response brief on the merits. The UFW filed its response on December 7, 2012. Ace filed its reply brief on January 16, 2013. On February 14, 2013, the 5th District Court of Appeal decided to review the case in full, i.e., issue a writ and set oral argument at a date to be set later. The court also has denied the Board's Petition for Rehearing on Proper Venue, and has indicated that the order staying the Board's decision and order issued by the court on October 17, 2012, will remain in effect. Oral argument has not yet been scheduled.

San Joaquin Tomato Growers, F066074

On November 8, 2012, San Joaquin Tomato Growers, Inc. (Petitioner), filed in the 5th District Court of Appeal a petition for writ of review and requested an immediate stay of the Board's decision. On November 16, 2012, the ALRB filed its opposition to the request for stay. On November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. The Board filed the certified record on November 29, 2012. Also on November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. The Petitioner's opening brief was filed February 1, 2013. The Board's response brief was filed March 18, 2013. The UFW's response brief was filed on March 19, 2013. The Petitioner's reply brief was filed

May 10, 2013. The 5th District Court of Appeal will decide whether or not to review the case in full, i.e., issue a writ and set oral argument at a date to be determined later.

RBI Packing LLC, Riverside Superior Court

On February 7, 2013, the General Counsel filed an ex parte application for a temporary restraining order ("TRO") to prevent the RBI Packing LLC, from terminating two crews of lemon pickers, allegedly in retaliation for their union activities. The matter was heard by Commissioner Barkley in Riverside Superior Court on Friday, February 8, 2013. Commissioner Barkley did not grant a TRO. However, Commissioner Barkley set an order to show cause hearing for February 15, 2013 to allow the General Counsel to seek a preliminary injunction ordering reinstatement and an end to discrimination against workers who were fired for exercising their rights.

On February 15, 2013 Riverside County Superior Court Judge Perantoni granted the ALRB General Counsel's application for a preliminary injunction pursuant to California Labor Code section 1160.4. Judge Perantoni found that the General Counsel had reasonable cause to believe that RBI Packing, LLC discriminatorily fired two crews of lemon harvesters upon learning that the workers were organizing with the United Farm Workers of America ("UFW") union. Judge Perantoni issued a preliminary injunction to remain in effect until the ALRB's charge is resolved through its administrative proceeding. The Judge further ordered RBI Packing, LLC to cease and desist from discriminating against employees who were organizing with the UFW, to cease and desist from refusing to farm the lemon ranch in retaliation for the workers' union activities, and to first offer all agricultural jobs (at the same or superior wages and conditions) that become available to the employees who engaged in organizing activity, and that the ALRB shall have access to the ranch and to payroll records in order to monitor and ensure compliance with the Preliminary Injunction. RBI Packing, LLC has approximately 55-60 non-supervisory agricultural workers. Court granted the injunction of February 15, 2013.

Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al., Case No. 13CECS01408

On May 6, 2013, the Board received a summons in a lawsuit filed by Gerawan Farming, Inc. ("Gerawan") in Fresno County Superior Court. The lawsuit names the Board, its individual members, and its Executive Secretary as defendants. In the lawsuit, Gerawan claims that 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. The Board has 30 days in which to file a response to the lawsuit (June 5, 2013). Gerawan has Fresno-area operations and grows grapes and tree fruits, including peaches, plums, nectarines and apricots. Due to the constitutional issues raised by the lawsuit, the Board contacted the Attorney

General's Office and requested legal representation. That request was granted on May 7, 2013.

On May 17, 2013, Gerawan filed an ex parte application in the Superior Court for the County of Fresno (Case No. 13 CECG 01408) requesting that the court stay the April 16th order of the Board directing the company to engage in mandatory mediation and conciliation with the UFW. The application for a stay is currently scheduled to be heard on June 5, 2013. The Board has until May 24, 2013 to file an opposition to the stay. Mediation sessions are currently scheduled for June 6 and 11, 2013.

D'Arrigo Brothers Company of California, Case No. D063886, 4th DCA, Div. 1

On May 10, 2013, D'Arrigo Bros. of California ("D'Arrigo") filed a petition for writ of review in the Fourth District Court of Appeal, Division One, requesting review of the Board's decision in 39 ALRB No. 4. The Board filed its certified record on May 22, 2012. The case is pending the filing of the Petitioner's opening brief.

MISCELLANEOUS:

On May 20, 2013, the ALRB received a dues notice from the Association of Labor Relations Agencies in the amount of \$400 for the period June 1, 2013 through May 31, 2014. The Board approved payment of the dues.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – The project is geared toward concerted activity and education of supervisors. The General Counsel and Chair reviewed some draft materials and should be receiving updated drafts soon.
- b. Annual Report – All sections have been submitted and the report is undergoing final review.
- c. Election Manual – Nothing new to report.
- d. Master Calendar – The Executive Secretary provided a status report on the calendar of upcoming projects

- 7. Regulations – Discussion of Potential Subjects for Rulemaking In 2012: Items listed in the Rulemaking Calendar (Unit Clarification Procedure, Voter Eligibility Exclusions (Family Members), Exculpatory Evidence, Electronic Filing).**
Nothing new to report.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB*

- **SB 25 (Steinberg)**

- As amended, repeals the prerequisite in Labor Code section 1164.11 of the Agricultural Labor Relations Act (ALRA) that a demand for mandatory mediation and conciliation (MMC) involving labor organizations certified prior to January 1, 2003 may not be made unless the parties involved have not previously had a binding contract between them.
- As amended, expands the definition of “agricultural employer” under Labor Code section 1140.4, subdivision (c) of the ALRA to include successors, as defined. As originally introduced in this bill, the inclusion of successors in the definition of “agricultural employer” only applied to the provisions of the Act involving MMC.
- As amended, leaves in place the current prerequisite in Labor Code section 1164, subdivision (a) that a demand for MMC involving a labor organization certified prior to January 1, 2003 may be made 90 days after a *renewed* demand to bargain by one of the parties. As introduced, the bill removed the requirement that the demand to bargain be a renewed one.
- As introduced, amends Labor Code section 1164.3, subdivision (f) to provide that board orders may be enforced in the superior court within 60 days after the order takes effect, even if a party seeks appellate review of the order, and that no final order of the Board shall be stayed pending review unless the court makes findings of clear and convincing evidence that the party seeking the stay will be harmed by implementation of the board’s order and has a likelihood of success on appeal. This section was not amended.
- Status: Amended in the Senate April 25, 2013; passed 23-10 in the Senate on May 6, 2013; sent to Assembly for first reading and held at desk.

- **SB 73 (Committee on Budget and Fiscal Review)**

- Enacts statutory changes relating to the Budget Act of 2013.
- Passed 24 -9 in the Senate, referred to the Assembly, read first time, and held at desk May 13, 2013.
- ALRB’s BCP passed Senate Budget Committee # 2 2-1 on May 9, 2013.

- **AB 73 (Blumenfield) and SB 65 (Leno) (2013-2014 Budget)**

- AB 73 Status: Referred to Assembly Committee on Budget March 14, 2013.
- SB 65 Status: Read first time and referred to Senate Committee on Budget and Fiscal Review January 10, 2013.

- **AB 729 (Roger Hernández)**
 - As amended, creates an evidentiary privilege for union agents and represented employees as well as former represented employees when the union agent is acting in his or her representative capacity.
 - As amended, creates an evidentiary privilege for a represented employee or represented former employer to prevent another person from disclosing a confidential communication that is privileged pursuant to this bill.
 - As amended, deletes the provision in the original version of the bill stating that the holders of this privilege are the employee and the union agent in disciplinary matters and the labor organization in all other representative matters.
 - Status: Passed in the Assembly Judiciary Committee 7-3 on April 30, 2013; amended May 6, 2013; ordered to third reading in the Assembly May 7, 2013.

- **AB 908 (Bonilla)**
 - As introduced, this bill would expand the group of agencies with which the Director of Employment Development could share information within his or her possession to include the Investigative Division of the Department of Motor Vehicles. The ALRB was recently added to the list of agencies with which the Director of Employment Development could share information.
 - Status: Passed the Assembly 75-0, read the first time in the Senate, and referred to the Senate Rules Committee for assignment on May 9, 2013.

Pending Legislation Affecting ALRB Stakeholders

- **AB 175 (V. Manuel Pérez)**
 - As amended, establishes the Uncovered Health Trust Fund for the purpose of providing health care coverage to workers ineligible for health care coverage under federal and state programs, including the Patient Protection and Affordable Care Act.
 - Status: Hearing in Assembly Committee on Health postponed by committee on April 23, 2013.

- **AB 123 (Bonta)**
 - As amended, this bill would require that the State Board of Education ensure that the state curriculum and framework with respect to César Chávez, where appropriate, also include instruction on the role of immigrants, including Filipino Americans, in the farm labor movement. The amendments substituted the term “farm labor movement” in place of “United Farm Workers.”
 - Status: Amended in the Assembly on April 2, 2013; Referred to Appropriations suspense file.

- **ACR 27 (V. Manuel Pérez)**

- This bill would urge all Californians to observe César Chávez's birthday as a day of public service. It was amended in the Assembly on April 1, 2013 to include 67 additional co-authors.
- Status: Ordered to the inactive file in the Senate at the request of Senator Corbett.

9. Personnel – *Progress on filling the following ALRB positions: Associate Personnel Analyst – Sacramento; Senior Accounting Officer (Specialist) - Sacramento; Accounting Officer (Specialist) - Sacramento; Attorney III/IV - Office of the General Counsel – Sacramento; Legal Secretary/Senior Legal Typist – Salinas; Legal Counsel/Assistant General Counsel I/II - Sacramento, Salinas and Visalia; and Legal Counsel/Assistant General Counsel I/II - El Centro:* The General Counsel is currently conducting interviews for a secretary in the Salinas Regional Office. The General Counsel has identified a need for additional attorneys in the regions and will address that issue in the next budget cycle. Announcements have gone out seeking two accountants and a human resources officer. An announcement for a regional director will be issuing soon.

10. Roundtable

The General Counsel would like to move the El Centro office to a nearby location to be more effective. The General Counsel also expressed interest in moving the Visalia Regional Office to Fresno. The Chair shared the fact that a few years ago stakeholders clearly indicated the El Centro office should remain open, but she acknowledged that circumstances may have changed since that time. The Board shared their previous experiences when considering opening, closing and moving offices.

The public meeting adjourned at 10:42 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.