

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**ALRB Headquarters Office  
Board Conference Room  
1325 J Street, Suite 1900  
Sacramento CA 95814-2944**

**June 5, 2013**

Time: 9:30 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason  
General Counsel: General Counsel Torres-Guillén  
Staff Present: Executive Secretary Barbosa (via telephone), Board Counsel Heyck,  
Robinson and Inciardi; and Analyst Massie  
Others Present: Daniel Rounds, Principal Consultant, Senate Office of Research

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for May 22, 2013 were approved 3-0.
- 2. Public Comment:** None.
- 3. Chair's Report:** The Chair reported we are in good standing with the current fiscal year budget. The projected expenditure plan for FY 2013-14 was reviewed. A conservative estimate projects an underfunding of operating expenses which may possibly be offset by unfilled positions. Concept budget change proposals are due to Labor and Workforce Development Agency (LWDA) by Friday, June 7. The Board requested regular quarterly accounting updates in August, November, February and May from Department of Industrial Relations staff who are assisting with the ALRB's accounting functions.
- 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.

## 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.

<b>Filing Date</b>	<b>Filing Party</b>	<b>Employer</b>	<b>10% Met</b>
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 filed with the court on May 22, 2013. The petitioner's opening brief is due within 35 days, i.e., June 26, 2013.

**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.

**Arnaudo Brothers, 2013-RD-001-VIS**

On May 24, 2013, Francisco Napoles, an employee at Arnaudo Brothers, filed a petition for decertification with the Visalia ALRB Regional Office. The workers at Arnaudo Brothers are presently represented by the United Farm Workers of America. Arnaudo Brothers has approximately ninety employees and grows tomatoes, alfalfa and asparagus in Tracy, California. On May 24, 2013, the Acting Regional Director issued a notice of decision to block the election. On May 30, 2013, the Petitioner filed a request for review of the regional director's decision to block the election. On May 30, 2013, the Employer filed a preliminary statement in support of the request for review that was filed by the Petitioner. The Employer's request for review, if any, is due June 6, 2013.

**COMPLAINT REPORT**

**COMPLAINTS ISSUED**

None.

**COMPLAINTS WITHDRAWN**

None.

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

**HEARINGS SCHEDULED**

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

Pre-hearing: July 19, 2013 at 10 a.m.

Hearing: August 19, 2013

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

Pre-hearing: August 15, 2013 at 10 a.m.

Hearing: September 9, 2013

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

Pre-hearing: July 3, 2013 at 10 a.m.

Hearing: July 25, 2013

## **HEARINGS TO BE SCHEDULED**

### **Nakamura Sales Corporation, 2012-CE-017-SAL**

Parties to discuss available dates for the hearing.

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

Parties to discuss available dates for the hearing.

## **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:**

None.

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

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

Exceptions are due June 14, 2013.

The reply briefs are due June 27, 2013.

## **CASES PENDING BOARD DECISION OR ACTION:**

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

Exceptions filed April 4, 2013.

Replies filed April 25, 2013.

### **Arnaudo Brothers, Inc., 2013-MMC-001**

Request for review of mediator's decision to stay MMC proceedings

### **San Joaquin Tomato Growers, Inc., 93-CE-38-VI**

Pending receipt of further revised makewhole specification

## **CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:****Premiere Raspberries, LLC, 2012-CE-003-SAL**

On May 24, 2013, the Board issued its decision in this matter. The parties have 30 days to seek judicial review of this decision, i.e., June 24, 2013.

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

On May 29, 2013, the Board issued an order setting a due date for the employer's reply to the UFW's request for an order on a number of matters involving the assigned mediator in the case.

**George Amaral Ranches, Inc., 2012-CE-069-SAL**

On June 4, 2013, the Board granted General Counsel's request for leave to seek court orders requiring compliance with investigative subpoenas issued to George Amaral Ranches, Inc. and C & G Farms, Inc. (Admin. Order No. 2013-25.)

**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. Arnaudo 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. The parties met for mediation on May 24, 2013. Counsel for the decertification petitioner attended the session and advised the parties and mediator that he was filing a decertification petition the next day. The mediator ruled that the negotiations should be held in abeyance until the election results are available, especially in light of the fact that the Union has had no contact with the workers in more than thirty years and there was a question as to whether the unit was abandoned. The UFW has requested that the Board issue various orders to the mediator, including an order directing him to resume the MMC proceeding. Both the employer and petitioner have filed responses to that request. The matter is before the Board for decision.

### **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. On May 24, 2013, the ALRB and the UFW each filed their opposition to the stay. The application for a stay is currently scheduled to be heard on June 5, 2013, at 1:30 p.m. Also scheduled for this same day is a disclosure hearing scheduled by the assigned judge, Judge Ikeda. According to the clerk, this means the judge wants to disclose some connection to or familiarity with one or more of their parties or counsel. Gerawan has stipulated to a 15-day

extension of our time to respond to the petition and complaint. Our answer is now due June 20, 2013.

Mediation sessions are currently scheduled for June 6 and 11, 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. On May 24, 2013, the ALRB and the UFW each filed their opposition to the stay. The application for a stay is currently scheduled to be heard on June 5, 2013, at 1:30 p.m. Also scheduled for this same day is a disclosure hearing scheduled by the assigned judge, Judge Ikeda. According to the clerk, this means the Judge wants to disclose some connection to or familiarity with one or more of their parties or counsel. Gerawan has stipulated to a 15-day extension of our time to respond to the petition and complaint. Our answer is now due June 20, 2013.

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 certified record was filed with the court on May 22, 2013. The petitioner's opening brief is due within 35 days, i.e., June 26, 2013.

## **MISCELLANEOUS:**

### **6. Special Projects**

- a. Education/Outreach: Update on UC Berkeley Outreach Project – Received more information on visual for poster. Board and General Counsel will review these materials and provide input. The plan is to have all of the materials completed in next month or two, including information for supervisors and workers as well as a radio message
- b. Annual Report – All sections have been submitted and the report is undergoing final review. The Chair hopes to complete review by end of week.
- c. Election Manual – Nothing new to report.
- d. Master Calendar – Board Counsel Robinson 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: Referred to Assembly Judiciary and Labor and Employment Committees May 24, 2013. Scheduled for hearing in the Assembly Labor and Employment Committee on June 12, 2013.
- **SB 73 (Committee on Budget and Fiscal Review)**
  - Enacts statutory changes relating to the Budget Act of 2013.
  - ALRB's BCP passed Senate Budget Committee # 2 2-1 on May 9, 2013.
  - Status: Referred to Assembly Budget Committee May 24, 2013
- **AB 73 (Blumenfield) and SB 65 (Leno) (2013-2014 Budget)**
  - AB 73 Status: Amended May 29, 2013 and re-referred to Assembly Budget Committee. Read second time and amended.
  - SB 65 Status: Read second time and amended, and re-referred to Senate Committee on Budget and Fiscal Review May 28, 2013.
- **AB 729 (Roger Hernández)**
  - Provides for evidentiary privilege for union agent-union member communications.
  - As amended on May 23, 2013, clarifies the term "confidential communication" as communications made to further the interest of the employee, former employee, union agent or those to whom disclosure is reasonably necessary for the transmission of information or accomplishment of the purpose for which the communication was made, including advice given by a union agency in the course of a representational relationship.

- As amended May 23, 2013, clarifies that there is no privilege if the union agent reasonably believes that disclosure of any confidential information is necessary to prevent a crime that is likely to result in death or substantial bodily injury to an individual.
- Status: Passed the Assembly 48-27 on May 28, 2013 and referred to the Senate, where it was read for the first time and referred to the Senate Rules Committee for assignment.

### **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)**

- 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.”
- As amended on May 24, 2013, would not be implemented unless funds are appropriate in the Budget Act or other legislation for its implementation.
- Status: Amended May 24, 2013. Passed Assembly Appropriations Committee. Passed the Assembly May 29, 2013, read for first time in Senate and referred to Senate Rules Committee.

- **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:* This week is the deadline for applications for Attorney III/IV for the Office of the General Counsel in Sacramento, Associate Personnel Analyst, Senior Accounting Officer (Specialist) and Accounting Officer (Specialist).

## **10. Roundtable**

Board Member Mason participated in the Agricultural Issues Forum, sponsored by Zenith Insurance. The forum was held in Monterey on May 30; approximately 20 industry and university representatives participated in this event. Mr. Mason led a discussion on farm labor issues in California.

The California Grape & Tree Fruit League reception and dinner will be held on June 19, 2013, at the Esquire Grill, 1213 K Street, Sacramento.

The public meeting adjourned at 10:41 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**