

**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**

**July 17, 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, Board Counsel Heyck, Robinson and Inciardi; Tess Gormley, DIR Accounting Officer  
Others Present: Daniel Rounds, Principal Consultant, Senate Office of Research

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for June 19, 2013 were approved 3-0.
2. **Public Comment:** None.
3. **Chair's Report:** The Chair had requested that accounting provide a further itemized breakdown of the department's budget, and a spreadsheet showing this breakdown for fiscal year 2012-13 was discussed.
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. The General Counsel reported on outreach efforts in the Coachella Valley. The General Counsel reported that the Revised Makewhole Specification in the San Joaquin Tomato Growers case (38 ALRB No. 12) should be issuing today, July 17, 2013.
5. **Executive Officer Report:**

**ELECTION REPORT**

## **NOTICE OF INTENT TO TAKE ACCESS (NA)**

<b>Filing Date</b>	<b>Filing Party</b>	<b>Employer</b>
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No NAs have been filed in the current fiscal year.

## **NOTICE OF INTENT TO ORGANIZE (NO)**

<b>Filing Date</b>	<b>Filing Party</b>	<b>Employer</b>
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No NOs have been filed in the current fiscal year.

## **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 Bros. 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 court granted the petitioner's request for an extension of time to file opening brief. The petitioner's opening brief is now due August 23, 2013. The Board's brief is currently due 35 days after the filing of Petitioner's opening brief. The Board has requested that this deadline be extended by 60 days, and the request is currently pending before the Court.

**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. On June 10, 2013, the Board issued its decision affirming the IHE's decision dismissing all election objections and directing that a certification of results of election issue. On June 18, 2013, the Executive Secretary issued a certification of results of election. The petition for writ of review was due July 10, 2013. No party filed a petition for review so this matter is now fully resolved.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

None.

### **COMPLAINTS WITHDRAWN**

None.

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

#### **HEARINGS SCHEDULED**

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

Pre-hearing was held July 3, 2013.

Hearing: July 25, 2013

##### **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: September 10, 2013 at 10 a.m.

Hearing: October 7, 2013.

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

Pre-hearing: September 10, 2013 at 1p.m.

Hearing: October 28, 2013

#### **HEARINGS TO BE SCHEDULED**

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

Pre-hearing: August 13, 2013 at 1p.m.

Hearing: September 9, 2013

(Parties continuing to discuss hearing dates)

#### **HEARINGS IN PROGRESS**

None.

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

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

The matter is pending the ALJ's decision.

**ALJ/IHE DECISIONS ISSUED:**

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

ALJ's decision issued July 1, 2013.

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

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

Exceptions due July 25, 2013.

Replies due August 8, 2013.

**CASES PENDING BOARD DECISION OR ACTION:**

**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:**

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

The matter is pending the Board's decision on review of exceptions to the decision of the administrative law judge.

**George Amaral Ranches, Inc., 2013-MMC-001**

The matter is pending the Board's decision on the UFW's petition for review of the mediator's final MMC report.

**Gerawan Farming, Inc., 2013-MMC-003**

The parties' responses to Lupe Garcia's petition to intervene are due July 19, 2013. The matter is pending the filing of any responses and the Board's decision on request to intervene filed by Lupe Garcia.

## **BOARD DECISIONS:**

None.

## **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. On June 18, 2013, the mediator issued his report to the Board setting the terms for an initial collective bargaining agreement between the parties. On June 28, 2013, the mediator issued an amended and final report. The UFW filed a petition for review of the mediator's report on July 8, 2013 and the Employer filed its opposition to the petition on July 12, 2013. The Board's decision is pending. On July 15, 2013, the UFW filed its motion to strike the employer's opposition. On July 16, 2013, the employer filed its opposition to the UFW's motion to strike. The matter is pending decision by the Board.

**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. 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. On June 5, 2013, the Board issued its decision granting the UFW's request and ordering the mediator to resume mediation (Arnauado Brothers,

Inc., 39 ALRB No. 7.) The parties met on May 24, 2013, and are scheduled to meet again on August 12, 2013. In the meantime, the mediator has directed the parties to continue negotiating on their own.

### **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. 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 met with the mediator on June 6 and 11, 2013 in Modesto California. The mediator asked that the parties continue to negotiate and narrow down issues before he schedules the next MMC meeting. Armando Elenes and Ron Barsamian are working on the scheduling the next meetings. On July 10, 2013, Lupe Garcia filed a petition for intervention seeking to intervene in the ongoing MMC proceeding. On July 12, 2013, the Board issued an order setting the due date of July 19, 2013 for the filing of a response. The matter is pending receipt of the parties' responses, if any, and the Board's decision.

Gerawan has filed a lawsuit in Fresno Superior Court challenging the Board's order referring Gerawan to MMC and challenging the constitutionality of MMC generally. See court litigation case for further information: Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al., Case No. 13CECS01408



## **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 Fifth 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. 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 Court heard Gerawan's request for a stay on June 10, 2013 and denied the request on June 19, 2013.

On June 18, 2013, the Board sent a copy of the certified record to the court and parties. The Board filed its answer to the petition and complaint on June 20, 2013.

By stipulation of the parties and order of the court, the Board's opposition brief to Gerawan's motion for a writ is due July 29, 2013. A hearing on Gerawan's motion is scheduled for August 9, 2013, at 1:30 p.m.

**Lupe Garcia v. California Agricultural Labor Rel. Bd., et al., Case No. 13 CECG 01557, Fresno County Superior Court**

Lupe Garcia, an individual worker from Gerawan, and other concerned workers who wished to remain anonymous due to fear of retaliation, filed a lawsuit alleging that the Board’s order referring the parties to mandatory mediation is facially invalid under the due process clause of the US and California Constitutions. The petitioners also allege that the Board’s actions violate the workers’ First Amendment rights to freedom of speech and association, as well as equal protection rights though the Petition and supporting memorandum do not appear to seek relief on that basis. The

lawsuit was stamped filed May 17, 2013 and, on June 25, 2013, was served on the Agricultural Labor Relations Board, the Board members and Executive Secretary. Our answer to the complaint is due within 30 days, i.e., July 25, 2013. However, Garcia's counsel agreed to extend our time to respond to September 3, 2013. Nothing is due in the interim.

The Board has requested that the Department of Justice also represent the Board in this matter and the department has agreed to such representation.

**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 court granted the petitioner's request for an extension of time to file opening brief. The petitioner's opening brief is now due August 23, 2013. The Board's brief is currently due 35 days after the filing of Petitioner's opening brief. The Board has requested that this deadline be extended by 60 days, and the request is currently pending before the Court.

**Premiere Raspberries, LLC, Case Number H039793, 6<sup>th</sup> DCA**

On June 21, 2013, Premiere Raspberries filed a petition for writ of review in the Sixth District Court of Appeal requesting review of the Board's decision in 39 ALRB No. 6. On July 5, 2013, the Board filed the certified record with the court. The petitioner's opening brief is due August 9, 2013. The Board's brief is due 35 days after the filing the opening brief.

**MISCELLANEOUS:**

On June 25, 2013, John Payne submitted our Data Consolidation Survey and Assessment Report, Level 5 and Virtualization and Compression. The report was due June 28, 2013.

The ALRB needs to update our Disaster Recovery Plan since we have moved to a new building.

The Board needs to assign staff to assume AERF duties.

**6. Special Projects**

- a. Education/Outreach: Update on UC Berkeley Outreach Project – The department received illustrations for review.
- b. Annual Report –The report is undergoing final review. Chairwoman Shiroma recommended that the report be augmented to include information for fiscal year 2012/2013.

- c. Election Manual – The Chair is reviewing a proposed timetable for the project.
- d. Master Calendar – Nothing new to report.

**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) ALRB Mandatory Mediation and Conciliation**

- As amended on June 19, 2013, requires the party seeking Mandatory Mediation and Conciliation to file a declaration stating that it has made itself available to the other party for bargaining at reasonable times and places during the applicable period.
- As amended on June 5, 2013, removes provisions that would have changed the definition of “agricultural employer.”
- Eliminates the prerequisite that there be no first contract between the parties for an agricultural employer or labor organization certified prior to January 1, 2003.
- Provides that an action to enforce a Board order making a mediator’s report final could be filed within 60 days without regard to whether the party is seeking judicial review
- Increases the evidentiary threshold for a court to grant a stay of Board order making a mediator’s report final.
- Status: Passed the Assembly Labor and Employment Committee on reconsideration June 26, 2013; passed the Assembly Judiciary Committee on July 2, 2013; read second time, ordered to third reading.

• **AB 263 (Roger Hernández) (Employment: retaliation; immigration-related practices)**

- Would prohibit an employer from retaliating or taking adverse action against any employee or applicant for employment because the employee or applicant has engaged in protected conduct.
- Would provide that an employee who was retaliated against or otherwise subjected to an adverse action is entitled to reinstatement and reimbursement for lost wages, and would subject a person who violates these provisions to a civil penalty of up to \$10,000 per violation.
- Would make it unlawful for an employer or any other person to engage in or direct another person to engage in an unfair immigration-related practice, as defined, against a person for the purpose of or with the intent of retaliating against any person for exercising a right protected under state

labor and employment laws or under a local ordinance applicable to employees.

- Status: Scheduled for hearing in the Senate Appropriations Committee on August 12, 2013.
  
- **AB 383 (Wagner) (Language Assistance in Adjudicative Proceedings)**
  - Requires the ALRB, among many agencies, to provide language assistance in adjudicative proceedings to the extent provided in the bill. It imposes no greater responsibility than the ALRB already has and is an effort to “maintain the codes.”
  - Status: Enrolled July 10, 2013.
  
- **AB 666 (Steinberg) (Employment Retaliation)**
  - Would subject those with business licenses to suspension or revocation, with a specific exception, if a current, former or prospective employee of the licensee attempts to exercise a right related to his or her employment or any terms, conditions or benefits of that employment protected by state law and, in reaction, the licensee threatens to retaliate or retaliates based on the employee’s citizenship or immigration status.
  - Would make it a cause for suspension, disbarment, or other discipline for any member of the State Bar to report immigration status or threaten to report immigration status of a witness or party to a civil or administrative action or his or her family member, as defined, to a federal, state or local agency because the witness or party exercises or has exercised a right related to his or her employment.
  - Status: Passed the Assembly Committee on Labor and Employment on June 27, 2013; referred to the Assembly Appropriations Committee.
  
- **AB 729 (Roger Hernández) (Evidentiary Privilege for Employee-Union Agent Communications)**
  - As amended July 9, 2013, would incorporate changes to Section 912 of the Evidence Code made by this bill and by AB 267, to take effect if both bills are chaptered and this bill is chaptered last. AB 267 provides for the attorney-client privilege to attach to communications between a person who consults a lawyer referral service for the purpose of securing legal counsel or legal advice and the lawyer referral service or staff person thereof.
  - Creates an evidentiary privilege for communications between a union agent and a represented employee or represented former employee while the union agent is acting in his or her representative capacity, except as specified.
  - Allows a represented employee or represented former employee to prevent another person from disclosing a privileged communication, except as specified.

- As amended on June 10, 2013, clarifies that the privilege would not apply in criminal proceedings.
- Status: Passed the Senate Judiciary Committee. Amended July 9, 2013, read second time, ordered to third reading.

### Pending Legislation Affecting ALRB Stakeholders

- **AB 10 (Alejo) (Minimum Wage)**
  - Would increase the minimum wage on and after January 1, 2013 to not less than \$8.25 and increase it incrementally to not less than \$10 per hour on and after January 1, 2018
  - Status: Scheduled for hearing in the Senate Appropriations Committee on August 12, 2013.
- **AB 34 (Hernandez) (State Historical Resources)**
  - Would require that the land currently known as Nuestra Señora Reina de La Paz, which includes the home and burial site of the late Cesar Chavez, be registered as a state historical landmark.
  - Status: Amended and ordered to third reading in the Senate on July 8, 2013.
- **AB 123 (Bonta) (State Curriculum on the Role of Filipino Americans in the Farm Labor Movement)**
  - Requires the State Board of Education ensure that the state curriculum and framework include, where appropriate, instruction on the role of immigrants, including Filipino Americans, in the farm labor movement.
  - Would not be implemented unless funds are appropriated by the Legislature in the annual Budget Act or another statute for its purposes.
  - Status: Passed the Senate Committee on Education on June 19, 2013; referred to the Senate Appropriations Committee and placed on the Appropriations suspense file July 1, 2013.
- **AB 155 (Alejo) (Employment: payroll records: right to inspect)**
  - Would allow an employee to elect to inspect or copy, or receive a copy of, or any combination thereof, his or her employment records and would require the employer to comply with that election, except that an employee terminated for workplace violence or sexual harassment could only receive a copy of the records.
  - Would limit employers to charging only actual cost for copies, meaning the per page cost to the employer for making the copies.
  - Status: Hearing in the Senate Labor and Industrial Relations Committee canceled by the author June 18, 2013.

- **AB 175 (V. Manuel Pérez) (Health Care Coverage)**
  - Establishes the Uncovered Health Trust Fund for the purpose of providing health care coverage to workers ineligible for health care coverage under the federal and state programs, including the Patient Protection and Affordable Care Act.
  - Status: Hearing in the Assembly Committee on Health postponed by committee on April 23, 2013.
  
- **AB 275 (Alejo) (Migrant Education)**
  - Requires, among many provisions, the Superintendent of Public Instruction to develop a monitoring instrument and procedure to monitor local education agencies receiving funds for the provision of services to migratory children with the objective of improving educational results and outcomes for migratory children.
  - Status: Referred to Assembly Committee on Appropriations; set for second hearing and held under submission on May 24, 2013.
  
- **AB 693 (Roger Hernández) (Employment)**
  - Makes nonsubstantive changes to Labor Code section 2810, which requires that a person or entity shall not enter into a contract or agreement for labor or services with a construction, farm labor, garment, janitorial, security guard or warehouse contractor if the person or entity knows or should know that the contract does not include funds sufficient to allow the contractor to comply with all applicable local, state and federal laws or regulations governing the labor or services to be provided.
  - Status: From printer February 22, 2013; was to have been possibly heard in committee March 24, 2013
  
- **AB 795 (Alejo) (Human Trafficking)**
  - Would provide that if a defendant has been convicted of solicitation or prostitution and can show that the conviction was the result of his or her status as a victim of human trafficking, he or she may petition the court for a finding that the defendant was victim of human trafficking and dismissal of the accusation or information against the defendant, among other provisions.
  - Status: In Assembly Appropriations Committee, held under submission May 24, 2013.
  
- **AB 880 (Gomez) (Medi-Cal Program Costs; Large Employer Responsibility)**
  - Requires a large employer, as defined, to pay the Employment Development Department an employer responsibility penalty for each covered employee, as defined, enrolled in Medi-Cal based on the average cost of employee-only coverage provided by large employers to their employees.



- Status: Read third time June 27, 2013, urgency clause refused adoption. Reconsideration granted on July 1, 2013 and ordered to inactive file at the request of Assembly Member Gomez.
- **AB 1263 (John A. Pérez) (Medi-Cal: CommuniCal)**
  - Would require the Department of Health Care Services to establish the Medi-Cal Patient-Centered Communication program (CommuniCal) to provide and reimburse for medical interpretation services to Medi-Cal beneficiaries who are limited English proficient.
  - Would require the Department to be the certifying body for CommuniCal certified medical interpreters.
  - Status: Amended and passed the Senate Public Employment and Retirement Committee on June 25, 2013; amended and passed the Senate Committee on Health July 9, 2013; re-referred to Senate Committee on Appropriations July 10, 2013.
- **AB 1277 (Skinner) (Occupational Safety and Health: Procedures)**
  - Revises and recasts various provisions regarding investigations and citations issued by the Division of Occupational Safety and Health in the Department of Industrial Relations, the persons or entities authorized to appear as parties in appeal before the Occupational Safety and Health Appeals Board, and the procedures that govern the Occupational Safety and Health Standards Board in issuing a temporary variance and in conducting a hearing on a permanent variance, among other provisions.
  - Status: Set for second hearing and held under submission in the Assembly Appropriations Committee on May 24, 2013.
- **ACR 27 (V. Manuel Pérez) (César Chávez' Birthday as Day of Public Service)**
  - Would call upon all Californians to observe César Chávez's birthday as a day of public service.
  - Status: Ordered to the inactive file at the request of Senator Corbett on April 29, 2013.

**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:* While the search continues for an accounting officer, the department will continue to use the services of the Department of Industrial Relations (DIR). The Board will work with DIR to determine which positions can be filled given the 2013/14 budget.

## **10. Roundtable**

Board Member Mason attended a workshop on "Immigration Reform and California Agriculture." The workshop was held on July 1 in Fresno, and was sponsored by the Maddy Institute at CSU, Fresno. Speakers included Congressman Jim Costa, Professor Phil Martin (U.C. Davis), and Professor Manuel Pastor (USC).

The Association of Labor Relations Agencies (ALRA) is hosting its 62nd Annual Conference from July 20 to July 24, 2013 at the Mayflower Renaissance Hotel in Washington, D.C.

On August 10, 2013, Board Counsel Terrie Robinson will be the keynote speaker on at the Black Employees United for Equality Scholarship dinner.

On September 26, 2013, the U.C. Berkeley Labor Center will hold a 50<sup>th</sup> Anniversary Celebration from 6:00-7:00 p.m. at the Berkeley Art Museum, 2626 Bancroft Way Berkeley, California. One of the honorees will be Marty Morgenstern, Secretary of the California Labor and Workforce Development Agency.

On October 11, 2013, Chairwoman Shiroma will be a panelist during the 24th Annual Envisioning California Conference sponsored by the Center for California Studies at California State University, Sacramento.

The public meeting adjourned at 10:50 a.m.