

**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**

August 7, 2013

Time: 9:40 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén (via telephone)
Staff Present: Executive Secretary Barbosa, 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 July 17, 2013 were approved 3-0.
- 2. Public Comment:** Mr. Rounds expressed concerns with the recently-instituted building security protocol, whether visitors arriving without valid identification would have difficulty, and offered suggestions to remedy visitor inconvenience. The new protocol was put in place at the request of the Army Corp of Engineers which occupies most of the building. The Board decided to ask Business Services Officer Saldivar to help work with the building manager and the Army Corp of Engineers to assure public access to the ALRB.
- 3. Chair's Report:** The Chair reported on the Final Budget Report for the Agricultural Labor Relations Board for Fiscal Year 2012. The Financial Integrity and State Manager's Accountability Act of 1983 (FISMA) requires Departments to biannually review internal accounting and administrative controls to determine if there are any risks which need to be mitigated. The report is due by December 30, 2013.
- 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. Specifically, that compliance in Hess should be completed by the board's next meeting and a settlement in Ace should be reached by the end of the month.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
08/01/13	UFW	Martines Fruits & Vegetables, Inc.

On Thursday August 1, 2013, the United Farm Workers Union filed a Notice to Take Access (NA) to the property of and a Notice of Intent to Organize (NO) the agricultural employees of Martines Fruits & Vegetables, Inc. in San Luis Obispo, CA. The employer is engaged in the harvesting of snap peas and employs approximately 200 workers.

NOTICE OF INTENT TO ORGANIZE (NO)

Filing Date	Filing Party	Employer	10% Met
08/01/13	UFW	Martines Fruits & Vegetables, Inc.	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 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 due August 23, 2013. The Board's brief is currently due 95 days after the filing of Petitioner's opening brief.

COMPLAINT REPORT

COMPLAINTS ISSUED

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

On July 19, 2013, Alegría De La Cruz, the Acting Regional Director for the Salinas ALRB Regional Office, issued a complaint in Kawahara Nurseries, Inc. The complaint alleges that the employer unlawfully terminated a number of workers because they engaged in organizational activity in support of the UFW who was seeking to organize workers during 2009 and 2010 election campaign. A two-week hearing has been scheduled starting September 30, 2013.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

FIVE HEARINGS SCHEDULED (September, October & November)

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

Pre-hearing: September 12, 2013, 1:30 pm

Hearing: September 30 to October 11, 2013

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

Pre-hearing: September 3, 2013 at 1p.m.

Hearing: October 1 and 2, 2013

Nakamura Sales Corporation, 2012-CE-017-SAL

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

Hearing: October 28, 2013 – November 7, 2013.

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

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

Hearing: November 4, 2013.

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

Pre-hearing held July 19, 2013

Motion for Continuance of the hearing was granted. Hearing will now be held on November 19, 2013

HEARINGS IN PROGRESS

None.

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

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

The hearing was held July 25 and 26, 2013. The post-hearing briefs are due August 30, 2013.

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:

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

The Respondent filed exceptions to the ALJ decision on July 25, 2013.

Replies are due August 22, 2013.

CASES PENDING BOARD DECISION OR ACTION:

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

On July 16, 2013, the Acting Regional Director of the Salinas ALRB Regional Office filed a Third Revised Makewhole Specification. The Respondent's answer was due within 15 days, i.e., August 5, 2013. No answer has yet been received. A Board decision will follow.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:**BOARD DECISIONS:****George Amaral Ranches, Inc., 2013-MMC-001**

On July 18, 2013, the Board issued its decision affirming the mediator's final report. Any petition for writ of review is due within 30 days, i.e., August 19, 2013.

Gerawan Farming, Inc., 2013-MMC-003

On July 29, 2013, the Board issued its decision dismissing Lupe Garcia's petition for intervention. The Board found that Garcia was not a "party" to the MMC proceedings under the Board's regulations. The Board further found that, even if the standards for intervention in civil court cases were applicable to MMC cases, Garcia did not qualify for intervention under those standards. Finally, the Board declined to address an argument made by Gerawan that members of the public have a constitutional right to attend MMC sessions as that issue was not properly raised. On August 2, 2013, Garcia filed a motion for reconsideration of the Board's decision, which is currently pending before the Board.

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

On July 29, 2013, the Board issued its decision affirming in part and overturning in part the ALJ's decision. The Board affirmed the ALJ's ruling that the information sought by the Union was relevant to the grievances filed, and affirmed the ALJ's conclusion that Respondent's mere claim of privilege did not support Respondent's categorical refusal to supply the information. The Board rejected the ALJ's conclusion that Respondent and Dole functioned as a single integrated enterprise. Any petition for writ of review of the Board's decision is due in 30 days (i.e., August 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 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 Board issued its decision on July 18, 2013. Any petition for writ of review is due within 30 days, i.e., August 19, 2013.

Arnuado 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 Arnuado Brothers, Inc. to mandatory mediation and conciliation. Arnuado 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 (Arnuado Brothers, Inc., 39 ALRB No. 7.) The parties met for mediation on May 24, 2013 and are scheduled to meet again on August 12, 2013. In the meantime, the parties are scheduled to continue their negotiations on their own. On July 30, 2013, Francisco Napoles, an Arnuado employee, filed a petition for writ of mandate in the Third District Court of Appeal challenging the dismissal of a decertification petition he filed in Case No. 2013-RD-001-VIS. In connection with that writ application, Napoles is requesting that the Court of Appeal stay the MMC proceedings. The Board's opposition to the writ petition and stay request is due August 9, 2013. The court has advised the Board that no certified record need be prepared in this case.

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 parties' next MMC session is scheduled for August 8, 2013.

On July 10, 2013, Lupe Garcia filed a petition to intervene in the ongoing Gerawan MMC matter. On July 19, 2012, the UFW and Gerawan filed their responses to the petition. On July 29, 2013, the Board issued its decision dismissing Garcia's petition. The Board found that Garcia was not a "party" to the MMC proceedings under the Board's regulations. The Board further found that, even if the standards for intervention in civil court cases were applicable to MMC cases, Garcia did not qualify for intervention under those standards. Finally, the Board declined to address an argument made by Gerawan that members of the public have a constitutional right to attend MMC sessions as that issue was not properly raised. On August 2, 2013, Garcia filed a motion for reconsideration of the Board's decision, which is currently pending before the Board.

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.

Lupe Garcia and other workers have also filed a lawsuit in Fresno Superior Court 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. See court litigation case for further information: Lupe Garcia v. California Agricultural Labor Rel. Bd., et al., Case No. 13 CECG 01557, Fresno County Superior Court.

Bud Antle, Inc., 2012-CE-007-SAL

On May 20, 2013, the administrative law judge issued a decision in which he found that Bud Antle had violated sections 1153(e) and 1153(a) of the Agricultural Labor Relations Act by failing to supply the Union with information necessary for it to process three grievances arising under a Memorandum of Understanding requiring the respondent to hire qualified applicants into its own harvest crews before resorting to subcontractors and provide those crews with as much work as its subcontractor crews. The respondent filed exceptions to the ALJ's decision and, on July 29, 2013, the Board issued its decision affirming in part and overturning in part the ALJ's decision. The Board affirmed the ALJ's ruling that the information sought by the union was relevant to the grievances filed, and affirmed the ALJ's conclusion that respondent's mere claim of privilege did not support respondent's categorical refusal to supply the information. The Board rejected the ALJ's conclusion that respondent and Dole functioned as a single integrated enterprise. Any petition for writ of review of the Board's decision is due in 30 days (i.e., August 28, 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 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. On July 29, 2013, the Board filed its opposition brief to Gerawan's writ of administrative mandate. 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. The lawsuit was stamped filed on May 17, 2013, but was not served on the Board. An attempt to serve the Board by service on regional staff last week proved unavailing.

On June 25, 2013, the Executive Secretary accepted service of the Lupe Garcia lawsuit on behalf of 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. On June 28, 2013, the Board was notified that the Attorney General's Office will also be representing the Board in this lawsuit. On August 5, 2013, the Board was notified that Garcia will seek to stay the MMC proceedings on an ex parte basis on August 7, 2013, in the Fresno Superior Court pending resolution of Garcia's request to intervene in the MMC proceedings. The request to intervene is currently before the Board in the form of a motion for reconsideration of the Board's July 29, 2013 decision dismissing the intervention petition.

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 court also granted the Board's motion for a 60 day extension of the time to file its brief. Therefore, the Board's brief will be due 95 days after the opening brief is filed

(it will be due on November 27, 2013, if D'Arrigo files their brief on the last day of their deadline). The court indicated that it does not contemplate any further extensions. The court also granted the Board's word count limit extension, increasing the word count limit from 14,000 to 28,000.

Premiere Raspberries, LLC, Case Number H039793, 6th 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.

Arnaudo Bros. LP/Inc., San Joaquin Superior Court

Case #39-2013-00299678-CU-PT-STK

On July 23, 2013, the General Counsel of the ALRB filed an Ex Parte Application seeking a temporary restraining order (TRO) and Preliminary Injunction against Arnaudo Bros. LP and Arnaudo Bros. Inc. (Arnaudo) based on allegations of threats and intimidation against a farm worker for participating in an ALRB process and engaging in protected union activity. On July 26, 2013, after oral argument, Judge Roger Ross of the San Joaquin County Superior Court granted the General Counsel's Application for a Temporary Restraining Order against Arnaudo. Judge Ross ordered Arnaudo to cease and desist from intimidating and threatening its employees because of their support for the union and participation in ALRB processes, and barred the employer from evicting or taking adverse employment action against Noe Martinez, unless it can show just cause for such action. Finally, Judge Ross ordered the parties to appear for a hearing on an Order to Show Cause as to why a preliminary injunction should not issue keeping the Judge's order in place during the pendency of the underlying ULP charge and granting the ALRB access to provide noticing to Arnaudo Brothers employees about their rights under the Act. The General Counsel's petition for a Preliminary Injunction will be heard in Department 13 of the San Joaquin Superior Court in Stockton, California, at 9:00 a.m. on Thursday, August 8, 2013. The General Counsel is moving to continue the hearing

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – Drafts of a tri-fold, poster and worksheet have been submitted for the department's review. The department has until August 30 to finalize the documents. The General Counsel suggested implementing a new contract for \$10,000 for additional work for the next wave of materials.
- b. Annual Report – A number of assignments are complete. A draft may be ready for review by the next Board meeting.

- c. Election Manual – A draft of the section covering access will be ready for distribution next week.
- d. Master Calendar – Nothing new to report other than the upcoming FISMA report.
- e. General Counsel’s Request to Relocate Regional Offices—The General Counsel has been focusing her efforts on relocating the El Centro office to Mecca. The Board asked for a written report on the research and conclusions the General Counsel relied upon as the basis for her recommendation. The Board proposed to narrow potential relocation sites based on the number of employers, farm workers, acreage farmed, crop statistics, etc. The Board will also need to obtain the estimated cost of an office relocation. After reviewing the data, the Board will decide the process to obtain public comment on a formal proposal. The General Counsel proposed public meetings be held regarding the possible relocation. In the future, the General Counsel would like the Board to consider moving the Visalia office to Fresno.

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: In Assembly Third Reading File as of August 7, 2013

- **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

9. Personnel – Progress on filling ALRB positions. The General Counsel announced Legal Counsel Cristina Peña will be working part time in Sacramento as well as Salinas. Arun Chatterjee has been hired as the new Accounting Officer and will begin on August 19, 2013. Interviews for Regional Directors will be completed today.

10. Roundtable

Nothing to report.

The public meeting adjourned at 11:15 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.