

**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**

**October 16, 2013**

Time: 9:38 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason  
General Counsel: General Counsel Torres-Guillén, Assistant General Counsel Pena,  
Analysts Cooper and Saldivar; Administrative Assistant Garcia,  
Personnel Officer Bernstein  
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 October 2, 2013 were approved 3-0.
2. **Public Comment:** None.
3. **Chair's Report:** The Chair praised the work of Accounting Officers Gormley and Chatterjee in keeping track of current invoices and providing updates on the status of current budget. The Chair also thanked Business Services Officer Saldivar for his work updating and revising the department procurement manual.
4. **Executive Officer Report:**

**ELECTION REPORT**

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

During the last reporting period, beginning on October 1, 2013, sixty-two (62) notices of intent to take access (NAs) were filed by the UFW with the agency. Twenty-five (25) were filed with the Visalia ALRB Regional Office and thirty-seven (37) with Salinas ALRB Regional Office. Of the 62 NAs filed, five (5) NAs have been dismissed (Taylor Farms, The Nunes Company, Al Pak Labor, Green Valley

Harvesting and Azcona Harvesting) and one NA has had its scope narrowed so as to only apply when the employer is functioning as an agricultural employer and not as a farm labor contractor (RAMCO). In each of these cases, the petitioner has not filed a request for review of the regional director's dismissal of the NAs or decision to limit the scope of the NA.

<b>Filing Date</b>	<b>Filing Party</b>	<b>Employer</b>
08/16/13	Gerawan Employees for a Free Election (GEFE)	Gerawan Farming, Inc.

The NA previously filed by Gerawan Employees for a Free Election (GEFE) has expired and no new NA has been filed. The investigation is in abeyance as the notice of intent to organize has been denied, the petitioner's notice of intent to take access has expired and the GEFE is not currently seeking to take worksite access anew.

2013-NA-004-VIS,	UFW	Delano Farms
2013-NA-005-VIS,	UFW	Castlerock Vineyards
2013-NA-006-VIS	UFW	Four Star Fruit
2013-NA-007-VIS	UFW	Kovacevich Farms
2013-NA-008-VIS	UFW	Pandol & Sons
2013-NA-009-VIS	UFW	VBZ
2013-NA-010-VIS	UFW	Sun Pacific
2013-NA-011-VIS	UFW	RB Sandrini
2013-NA-012-VIS	UFW	Hronis, Inc.
2013-NA-013-VIS	UFW	M. Caratan
2013-NA-014-VIS	UFW	Wawona Packing Co.
2013-NA-015-VIS	UFW	Stamoules Produce Co.
2013-NA-016-VIS	UFW	Sun West Fruit Co.
2013-NA-017-VIS	UFW	Pappas & Co.
2013-NA-018-VIS	UFW	Red Rooster Co.
2013-NA-019-VIS	UFW	Fowler Packing
2013-NA-020-VIS	UFW	Vignolo Farms
2013-NA-021-VIS	UFW	Lucich Farms
2013-NA-022-VIS	UFW	Dulcich Farms
2013-NA-023-VIS	UFW	Sundale Vineyards
2013-NA-024-VIS	UFW	Jasmine Vineyards
2013-NA-025-VIS	UFW	Giumarra Vineyards
2013-NA-026-VIS	UFW	Central California Tomato Grower
2013-NA-027-VIS	UFW	Live Oak Farms
2013-NA-028-VIS	UFW	Dimare Fresh Newman
2013-NA-003-SAL	UFW	Reiter Berry Farms
2013-NA-004-SAL	UFW	Premiere Raspberries dba Dutra
2013-NA-005-SAL	UFW	Tanimura & Antle

2013-NA-006-SAL	UFW	Taylor Farms
2013-NA-007-SAL	UFW	Ortega Farms
2013-NA-008-SAL	UFW	Hilltown Packing Co.
2013-NA-009-SAL	UFW	The Nunes Company, Inc.
013-NA-010-SAL	UFW	Rocha Brothers Farms
2013-NA-011-SAL	UFW	Bengard Ranch, LLC
2013-NA-012-SAL	UFW	T.T. Miyasaka, Inc.
2013-NA-013-SAL	UFW	Al Pak Labor
2013-NA-014-SAL	UFW	Aptos Berry Farms, Inc.
2013-NA-015-SAL	UFW	Valley Pride
2013-NA-016-SAL	UFW	Ocean Mist Farms
2013-NA-017-SAL	UFW	Garrouette Farms
2013-NA-018-SAL	UFW	Scurich Berry Farms, Inc.
2013-NA-019-SAL	UFW	Green Valley Harvesting
2013-NA-020-SAL	UFW	Azcona Harvesting
2013-NA-021-SAL	UFW	Larse Farms
2013-NA-022-SAL	UFW	RAMCO
2013-NA-023-SAL	UFW	Sabor Farms
2013-NA-024-SAL	UFW	Growers Express, LLC
2013-NA-025-SAL	UFW	T & R Berry Farms
2013-NA-026-SAL	UFW	Reiter Brothers
2013-NA-027-SAL	UFW	Laguna Farms
2013-NA-028-SAL	UFW	J & E Berry Farms
2013-NA-029-SAL	UFW	Mac Berry Farms
2013-NA-030-SAL	UFW	Boskovich Farms
2013-NA-031-SAL	UFW	Marz Farms
2013-NA-032-SAL	UFW	Aracapa & Westside Strawberry Farms, Inc.
2013-NA-033-SAL	UFW	Catalino Berry Farms
2013-NA-034-SAL	UFW	Springfield Farms
2013-NA-035-SAL	UFW	Church Bros., Inc.
2013-NA-036-SAL	UFW	Braga Ranch, Inc.
2013-NA-037-SAL	UFW	Royal Oaks Farm
2013-NA-038-SAL	UFW	San Miguel Produce
2013-NA-039-SAL	UFW	Festival Farms

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

No new NOs have been filed during this reporting period.

**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 petitioner filed its opening brief on September 13, 2013. The Board's brief is due December 17, 2013.

#### **Gerawan Farming, Inc, 2013-RD-002-VIS**

On September 18, 2013, Silvia Lopez, a farmworker at Gerawan Farming, Inc., filed a petition to decertify the United Farm Workers of America (UFW), the exclusive representative of Gerawan's employees. The employer's response states that Gerawan Farming has 3,600 employees and grows table grapes and stone fruit. On September 23, 2013, approximately 80-100 farmworkers protested outside of the ALRB Visalia Offices voicing their request for a vote in the Gerawan Farming, Inc. decertification election. The protestors included the petitioner for decertification. Petitioner filed two requests for expedited review during the Regional Director's investigation of the petition. The first Request for Review argued that the election must be held within seven days of the filing of the petition per the ALRA and could not be delayed by the Regional Director. This request for review was denied because

the Board and the California Court of Appeal have upheld elections held outside the seven-day period as long as there was no prejudice to the parties, i.e., disenfranchisement of large numbers of employees and also because the filing did not meet the Board's regulation. Admin. Order No. 2013-36. The second Request for Review asked the Board to review the Regional Director's decision to interview employees without the counsel they had chosen, who ostensibly had also represented a farm labor contractor (FLC) that provided employees to Gerawan Farming, Inc. (Employer). On September 26, 2013, the Board denied this request for review as moot because the Board found review inappropriate under section 20393 and because a Regional Director's determination of the adequacy of the showing of interest is not reviewable (Cal. Code Regs., tit. 8, § 20300(j)(5)). Admin. Order No. 2013-37. On September 25, 2013, the Regional Director dismissed the decertification petition. The Regional Director, following investigation of the petition, determined that the petition was invalid because it had not been accompanied by an adequate showing of interest. Specifically, the Regional Director found that a determinative number of signatures submitted were of questionable authenticity. Also, the Regional Director determined that there is no reasonable cause to believe that the petition presents a question of representation. Specifically, his investigation revealed that there was significant unlawful assistance by the employer in the circulation of the petition, by gathering of signatures for the petition and by providing other material assistance to employees in the decertification process. On September 30, 2013, the petitioner filed a request for expedited review of the regional director's September 25, 2013 decision to dismiss the petition. On October 1, 2013, the employer requested permission to file a response brief. The Board denied the request on October 4, 2013 because the RD's determination of the showing of interest was not reviewable.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

No new complaints have issued.

### **COMPLAINTS WITHDRAWN**

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

On October 3, 2013, the Salinas Regional Director withdrew the complaint as the parties had reached an informal unilateral agreement and the charging party did not seek review of the agreement.

### **SIX HEARINGS SCHEDULED**

#### **Tri-Fanucchi Farms, Inc., 2013-CE-008-VIS**

Pre-hearing: October 11, 2013.

Hearing: October 21, 2013.

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

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

Hearing: November 4, 2013.

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

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

Hearing: November 19, 2013.

**Charanjit S. Batth, 2012-CE-033-VIS**

Pre-hearing: November 13, 2013

Hearing: December 9, 2013.

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

Pre-hearing: November 27, 2013 at 10 a.m.

Hearing: December 16-20, 2013.

**CASES TO BE SET or RE-SET**

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

First pre-hearing was held September 3, 2013. The second prehearing conference was canceled and the hearing taken off calendar pending availability of counsel and ALJ. The matter is being transferred to another ALJ with instructions to ascertain the length and scope of the hearing.

**HEARINGS IN PROGRESS**

None.

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

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

Hearing was held from September 30, 2013 to October 3, 2013. The matter is pending the receipt of transcripts and submission of post-hearing briefs.

**ALJ/IHE DECISIONS ISSUED:**

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

ALJ's decision issued September 26, 2013.

Exceptions are due October 21, 2013.

Replies, if any, are due November 5, 2013.

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

ALJ's decision issued September 30, 2013.  
Exceptions are due October 24, 2013.  
Replies, if any, are due November 7, 2013.

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

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

ALJ's decision issued September 26, 2013.  
Exceptions are due October 21, 2013.  
Replies, if any, are due November 5, 2013.

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

ALJ's decision issued September 30, 2013.  
Exceptions are due October 24, 2013.  
Replies, if any, are due November 7, 2013.

**CASES PENDING BOARD DECISION OR ACTION:**

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

On September 24, 2013, the Board issued Administrative Order 2013-35 approving the parties' Formal Bilateral Settlement Agreement in Ace Tomato Company, Inc. with conditions. Among the conditions are removing terms that would have settlement monies directed toward charitable endeavors not consistent with purpose of the Agricultural Labor Relations Act, i.e., remedying unfair labor practices and aggrieved farm workers, and ensuring that the agreement does not settle claims other than those listed in the caption, which would be a violation of Board regulation 20298 (a). On October 3, 2013, the General Counsel filed a request for an extension of time to file motion for reconsideration of the Board's Order conditionally approving formal bilateral settlement that was granted on October 4, 2013. On October 7, 2013, Ace Tomato Company, Inc. filed a separate motion for reconsideration of the Board's order that was denied as untimely on October 8, 2013. On October 11, 2013, the General Counsel and UFW submitted a motion for reconsideration of the Board's order that is pending before the Board for decision.

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

The matter is pending before the Board for decision.

**Gerawan Farming, Inc, 2013-RD-002-VIS**

On September 30, 2013, the petitioner filed a request for expedited review of the regional director's September 25, 2013 decision to dismiss the petition. On October 1, 2013, the employer requested permission to file a response to the request for review. The Board denied both requested on October 4, 2013 because the Regional Director's determination of the showing of interest was not reviewable.

**San Joaquin Tomato Growers, 93-CE-38-VI**

On September 26, 2013, the employer filed a motion for reconsideration of certain aspects of the Board's order. The employer claims that the Board incorrectly stated the makewhole period and made an error concerning the withholding of taxes from the makewhole award. The matter is before the Board for decision. On October 4, 2013, the Board granted Respondent's motion for reconsideration in order to allow the Board an opportunity to further consider the issue of whether the makewhole specification should take into account tax withholdings and deductions at this point in the process.

**CASES SETTLED OR RESOLVED:**

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

The Regional Director and the Charged Party (Nakamura Sales Corp.) executed an informal, unilateral agreement on September 12, 2013. As the time for seeking review of the agreement has lapsed the Executive Secretary took this case off calendar. On October 3, 2013, the Salinas Regional Director withdrew the complaint.

**COMPLIANCE CASES CLOSED:**

None.

**BOARD DECISIONS:**

**Gerawan Farming, Inc., 2013-RD-002-VIS**

Petitioner filed a request for expedited review arguing that the election must be held within seven days of the filing of the petition per the ALRA and could not be delayed by the Regional Director for one day. This request for review was denied because the Board and the California Court of Appeal have upheld elections held outside the seven-day period as long as there was no prejudice to the parties, i.e., disenfranchisement of large numbers of employees and also because the filing did not meet the Board's regulation. Admin. Order No. 2013-36.

**Gerawan Farming, Inc., 2013-RD-002-VIS**

Petitioner filed a request for expedited review asking the Board to review the Regional Director's decision to interview employees without the counsel they had chosen, who ostensibly had also represented a farm labor contractor (FLC) that provided employees to Gerawan Farming, Inc. (Employer). On September 26, 2013, the Board denied this request for review as moot because the Board found review inappropriate under section 20393 and because a Regional Director's determination of the adequacy of the showing of interest is not reviewable (Cal. Code Regs., tit. 8, § 20300(j)(5).) Admin. Order No. 2013-37.



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

On September 24, 2013, the Board issued Administrative Order 2013-35 approving the parties' Formal Bilateral Settlement Agreement in Ace Tomato Company, Inc. with conditions. Among the conditions are removing terms that would have settlement monies directed toward charitable endeavors not consistent with purpose of the Agricultural Labor Relations Act, i.e., remedying unfair labor practices and aggrieved farm workers, and ensuring that the agreement does not settle claims other than those listed in the caption, which would be a violation of Board regulation 20298 (a). The matter is pending review by the parties and submission of a revised agreement that satisfies conditions in Board order. Admin. Order No. 2013-35.

**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.

### **Arnaudo 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 Arnaudo Brothers, Inc. to mandatory mediation and conciliation. Arnaudo Brothers grows tomatoes and other crops in San Joaquin County. The UFW was certified at Arnaudo Brothers, Inc. on January 14, 1977. 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 selected Matthew Goldberg as the mediator/arbitrator in this case and a mediation session was held on May 24, 2013 at which the mediator was informed that a petition was being filed to decertify the UFW as the representative. Based upon this information, the mediator decided to hold the MMC proceeding in abeyance pending resolution of the petition. On May 28, 2013, the UFW filed a request with the Board seeking an order directing the mediator to resume MMC. On May 30, the Employer filed a response opposing the UFW's request. On June 5, 2013, the Board issued its decision granting the UFW's request and ordering the mediator to resume mediation (Arnaudo Brothers, Inc., 39 ALRB No. 7.) The parties met for mediation on May 24, 2013 and were scheduled to meet again on August 12, 2013. In the meantime, the parties were to continue their negotiations on their own.

On July 30, 2013, Francisco Napoles ("Napoles"), an Arnaudo 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 requested that the Court of Appeal stay the MMC proceedings. On August 8, 2013, the Court of Appeal entered an order summarily denying the petition for writ of mandate and request for stay. Napoles did not seek review with the California Supreme Court and the matter is now final.

On August 15, 2013, the Board was notified that Napoles would be seeking a temporary restraining order ("TRO") in the San Joaquin County Superior Court on August 19, 2013. On August 19, 2013, the court granted the TRO directing the Board to stay the MMC proceedings. On August 20, 2013, the Board issued an

administrative order staying the MMC proceedings until further notice.

On September 9, 2013, Judge McNatt, at the hearing on preliminary injunction, agreed with the Board's argument that the Superior Court lacked jurisdiction to issue an injunction and to hear the case. On September 11, 2013, pursuant to the court's decision from the bench, the Board vacated its previous order staying the MMC proceeding and directed the parties and mediator to resume the MMC process.

On September 11, 2013, pursuant to the court's decision from the bench, the Board vacated its previous order staying the MMC proceeding and directed the parties and mediator to resume the MMC process. The mediator's final report is pending.

On September 13, 2013, Napoles requested that the court limit its order to denying the preliminary injunction or, in the alternative, reconsider its order on jurisdiction. . On September 19, 2013, the Board filed an opposition to Napoles' request and requested that the court sign the Board's proposed order. The UFW has also opposed Napoles' request. The court's decision is pending.

The mediator's final report is pending.

See court litigation for status of court 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 mediation proceeding has concluded and the mediator filed his final report on September 30, 2013. The petition for review of the report is due on October 15, 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, Lupe Garcia filed a petition for reconsideration asking the ALRB to decide, inter alia, whether the public, including Garcia and other Gerawan employees, has the right to attend "on the record" MMC proceedings under Article I, Section 3 (b) of the California Constitution and the 1st Amendment of the US Constitution. On August 21, 2013, the Board issued its decision finding no public right of access under Article I, Section 3 (b) of the California Constitution and the 1st Amendment of the US Constitution. On August 21, 2013, the Board denied the motion for reconsideration but granted the motion sua sponte because it raised issues that, if unresolved, could potentially result in the deprivation of constitutionally protected rights. On review, the Board held there was no right of access under the State and United States Constitutions.

Gerawan has also 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.

## **COURT LITIGATION/BOARD**

### **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. On September 24, 2013, the court sent a letter to the parties advising them that it has come to their attention that the case underlying this proceeding may have settled. If this is correct, the question arises whether the court should dismiss this proceeding as moot and vacate its stay order. The court directed the parties to advise the court of the status of this proceeding within 30 days from the date of this letter, i.e., October 24, 2013.

**San Joaquin Tomato Growers, F066074**

On November 8, 2012, San Joaquin Tomato Growers, Inc., 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. On October 3, 2013, the court summarily denied the petition. Any petition for review before the California Supreme Court is due October 14, 2013. At this time, no such petition has been filed.

**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 brief was filed September 13, 2013. The Board's brief is due December 17, 2013.

**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 was filed August 9, 2013. The Board's brief was filed September 13, 2013. The Appellant's reply brief was filed October 8, 2013. All briefing has been completed and the matter is pending oral argument or decision.

**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 was held on August 9, 2013. On September 26, 2013, the judge issued his decision denying Gerawan's petition for administrative mandate or, in the alternative, ordinary mandate. The Board may seek judgment on Gerawan's non-writ claims or may await an appeal by Gerawan of the denial of the writ.

**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 pending resolution of Garcia's request to intervene in the MMC proceedings. On August 7, 2013, Judge Black of the Fresno Superior Court denied the application for a stay "for the reasons stated in his order denying the stay in the Gerawan case," and because "as of now, Mr. (Lupe) Garcia is a stranger to the MMC process, which is between Gerawan and the union, and therefore lacks standing to bring this application."

On August 30, 2013, the Board filed its answer to Garcia's Petition and Complaint. The matter is now pending a decision on Garcia's Petition and Complaint.

**Napoles v. Agricultural Labor Relations Board, San Joaquin County Superior Court, 39-2013-00300664-CU-WM-STK**

On August 15, 2013, the Board was notified that Francisco Napoles ("Napoles") would seek a temporary restraining order ("TRO") in the San Joaquin County Superior Court on August 19, 2013. Napoles sought an order preventing Mandatory Mediation and Conciliation ("MMC") proceedings between Napoles' employer, Arnaudo Brothers, LP ("Arnaudo") and the UFW from going forward. The Board referred Arnaudo and the UFW to MMC in February, 2013 and MMC proceedings are currently ongoing (ALRB Case No. 2013-MMC-001). The TRO is requested in connection with a lawsuit filed on August 14, 2013 by Napoles naming the Board as respondent. In the lawsuit, Napoles claims that the Board exceeded its powers when it referred Arnaudo and the UFW to MMC because the UFW disclaimed its interest in representing the bargaining unit and was no longer the certified representative, that the MMC proceedings violate his constitutional right to due process, that bias on the

part of ALRB employees caused a denial of due process, that the statutes governing the MMC process are unconstitutional, and that the statute defining court jurisdiction over ALRB orders is unconstitutional.

On August 19, 2013, the hearing went forward before Judge McNatt who granted the TRO. Following argument, the judge stated that the issues were too complex for him to resolve without further time to review the materials and consider the arguments. He indicated that for this reason he would issue the TRO. Petitioner's brief was filed August 28, 2013. The Board's opposition brief was filed September 5, 2013.

On August 20, 2013, in compliance with the court's order, the Board issued an administrative order temporarily staying Mandatory Mediation and Conciliation ("MMC") proceedings between Arnaudo Brothers, Inc. ("Arnaudo") and the UFW pending the outcome of the September 9th hearing.

A hearing was held on September 9, 2013 to decide whether to issue a preliminary injunction. Napoles requested that the preliminary injunction direct the Board to refrain from enforcing the UFW's certification and from initiating or pursuing any proceeding contingent on the UFW's certification. Judge McNatt agreed with the Board's argument that the Superior Court lacked jurisdiction to issue an injunction and to hear the case.

On September 11, 2013, pursuant to the court's decision from the bench, the Board vacated its previous order staying the MMC proceeding and directed the parties and mediator to resume the MMC process.

On September 13, 2013, Napoles requested that the court limit its order to denying the preliminary injunction or, in the alternative, reconsider its order on jurisdiction. . On September 19, 2013, the Board filed an opposition to Napoles' request and requested that the court sign the Board's proposed order. The UFW has also opposed Napoles' request. The court's decision is pending.

On October 1, 2013, the ALRB filed a notice to advise the court of an order entered on September 26, 2013, and received on October 1, 2013 by the ALRB, in *Gerawan Farming, Inc. v. Agricultural Labor Relations Board*, Fresno County Superior Court Case No. 13-CE-CG-01408 (the "September 26 Order") denying the petition for writ of mandate sought in that case.

## **COURT LITIGATION/ GENERAL COUNSEL**

### **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. On August 15, 2013, after a case management conference, the case was transferred to Indio, California, where assignment is pending.

**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.

**Arnaudo Bros. LP/Inc., Case No. 39-2013-00299678-CU-PT-STK (San Joaquin Superior Court)**

On July 23, 2013, the General Counsel of the ALRB filed an Ex Parte Application seeking a 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, the 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 was heard in Department 13 of the San Joaquin Superior Court in Stockton, California. at 9:00 a.m. on Thursday, August 8, 2013 before Judge Lesley Holland. On September 16, 2013, Judge Holland denied the General Counsel's request for a preliminary injunction and vacated the TRO because the Judge found that the General Counsel did not make an adequate evidentiary showing of a threat, in light of the speech protections granted to the employer under Labor Code §1155. Any appeal of the decisions was due on October 7, 2013.

**ALRB v. Gerawan Farming, Inc., Case No. 13CECG02594**

On August 19, 2013, the General Counsel of the ALRB filed an ex part application for a Temporary Restraining Order ("TRO") against Gerawan Farming, Inc. based on allegations that Gerawan's supervisors unlawfully coerced and intimidated its agricultural employees into signing a petition to decertify the United Farm Workers of America ("UFW"), the employees' current certified bargaining representative. On August 21, 2013, Judge Jeffrey Hamilton, Jr. of the Fresno County Superior Court granted a temporary restraining order enjoining Gerawan Farming, Inc., its partners, agents, and others under its direction except for non-supervisory employees from approving, encouraging and circulating a decertification petition among its employees, interrogating employees about their union sympathies, and threatening employees with job loss for supporting the Union. Following the hearing, the General Counsel entered into an agreement with Gerawan that allows ALRB staff to train all

of Gerawan's supervisors and their farmworkers on their rights and responsibilities under the ALRA.

The General Counsel's petition for a preliminary injunction against Gerawan Farming, Inc. in case 2013-CE-027-VIS (Fresno Superior Court Case 13CECG02594) was granted on September 19, 2013 in its entirety and Gerawan's ex parte application for expedited discovery related to the matter was denied. The Court found that there was good cause to order Gerawan to "cease and desist from approving, encouraging, and circulating a decertification petition among its employees; cease and desist from interrogating employees about their union sympathies; and cease and desist from threatening employees with job loss for supporting the Union." This order is consistent with the TRO that was granted earlier. The injunction will be in effect until the ALRB's final adjudication of the case on its merits; provided, however, that if conditions which led to the injunction being found just and proper materially change, either party may move the court to terminate or modify the injunction, by way of a regularly noticed motion.

#### **MISCELLANEOUS:**

Executive Secretary Barbosa thanked Board Counsel Robinson for her work as Acting Executive Secretary in his absence.

The Executive Secretary will contact the mediator regarding progress in Arnaudo Brothers, Inc., 2013-MMC-001 case.

On October 4, 2013, Senator Andy Vidak sent a letter to Chairwoman Genevieve Shiroma requesting documents concerning the Gerawan 2013-RD-002-VIS election case.

On October 10, 2013, Assemblywoman Shannon Grove sent a letter to Chairwoman Genevieve Shiroma posing various questions regarding the Board's decision in the Gerawan 2013-RD-002-VIS election case.

On October 10, 2013, decertification petitioner Silvia Lopez sent a public record act request to the Executive Secretary for a copy of the employer's response in the Gerawan 2013-RD-002-VIS election case.

- 5. General Counsel's Report:** The General Counsel thanked and commended staff on: (1) their work in preparation for the Gerawan Farming election; (2) enabling employees to travel on short notice with minimal direct personal expense by acquiring American Express cards for General Counsel staff and by making travel arrangements through TravelStore travel agency; (3) the reorganization of the human resources office, (4) updating the department's procurement manual; (5) improvements in trial preparation; and (5) acquiring an exemption to use Comcast instead of AT&T for

internet service in regional offices. The General Counsel would like to discuss improving or changing the current case management system. The Chair offered to lend her institutional knowledge having worked on the development of the system for many years. Ms. Torres-Guillén also reported on the status of hearings and unfair labor practice charges in the regions.

## 6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project –The Chair and General Counsel have been meeting and working on the materials. There are radio pieces that will also be a part of the effort. They will be developed next.
- b. Annual Report –Work continues on the update.
- c. Election Manual – Board Counsel Robinson will try to update the manual as much as possible before December 2, 2013.
- d. Master Calendar – Executive Secretary Barbosa provided a status report on the calendar of upcoming projects.

**FISMA Report** – The State Financial Integrity and State Manager's Accountability Act of 1983 (FISMA) Report is due by December 31, 2013.

- e. Procurement Manual – The Board will vote on approval of the updated Procurement and Procedures Manual at its next meeting. Member Mason requested additional time to review the revisions. The Chair thanked everyone for their work on this project.

## 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).*

Board Counsel Heyck will attend the Office of Administrative Law class entitled *Rulemaking Under the California APA* next week.

## 8. Legislation – There is no new legislation. The LWDA inquired if the Board had any legislative proposals. . It is the Board's policy not to sponsor legislation.

## 9. Personnel – *Progress on filling ALRB position.* The Chair reported Board Counsel Robinson has accepted the position of General Counsel at the Native American Heritage Commission effective December 1st. The General Counsel announced Servando Medina was hired on October 1st as a limited term Staff Services Analyst in the Salinas office. The Executive Secretary is working with Personnel Officer Bernstein and Analyst Saldivar to verify that all Statement of Economic Interest Form 700's are on file.

## **10. Roundtable**

The Agricultural Presidents' Council annual luncheon will be held on November 5, 2013.

The public meeting adjourned at 10:28 a.m.

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