

**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**

November 6, 2013

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén (by telephone)
Staff Present: Board Counsel Heyck, Robinson and Inciardi; and Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for October 16, 2013 were approved 3-0.
- 2. Public Comment:** None
- 3. Chair's Report:** The Chair expressed her appreciation of the work by the General Counsel and Information Systems Analyst Payne on the email migration project and their work to make sure that the regional offices' internet capabilities meet their needs. Mr. Payne briefed the chair on the capacity of the California Email Services (CES) mail boxes, the Proofpoint component of the new email system, and the ability to save information in the new email system as well as the continued ability to have access to information saved in the old email system. There will be a modest increase in expenditures for the new email system and internet service. Accounting Officer Gormley will need to account for these additional expenditures. Ms. Shiroma thanked the ALRB staff for their work conducting the Gerawan Farming election.
- 4. Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

No new NAs have been filed since the Board's last meeting on October 16, 2013. Of the sixty-two (62) notices of intent to take access (NAs) that were filed by the UFW in early October 2013, five have been dismissed and the remaining fifty-seven have now

lapsed and have not been renewed. None of the NAs that were filed resulted in the filing of a Notice of Intent to Organize.

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. 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. On June 15, 2012, the Administrative Law Judge (ALJ) issued his decision in this matter. On April 11, 2013, the Board issued its decision dismissing the decertification petition and setting aside the election. 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 petitioner filed its opening brief on September 13, 2013. The Board's brief is due December 17, 2013.

Dole Berry North, 2013-RD-001-SAL

On October 18, 2013, Petitioner Jose Aguilar, an employee at Dole Berry North, filed a decertification petition with the Salinas ALRB Regional Office seeking to remove the incumbent bargaining representative, the United Farm Workers (UFW). Dole Berry Fresh is a strawberry grower located in Salinas CA with approximately 745 employees. On October 25, 2013, the ALRB conducted a secret ballot election at the employer's six ranches in the Salinas and Watsonville areas. In the midst of the election, Salinas Regional Director Alegría De La Cruz advised the parties that she had decided to impound the ballots based on the filing of three charges, two against the employer and one against the union. The UFW charges allege that the Employer unlawfully initiated and assisted in a decertification campaign against the exclusive certified bargaining representative UFW, by allowing unauthorized persons to enter onto the property, during working hours, to circulate a petition to decertify the UFW, in violation of the Act. The union further alleges that the employer provided decertification supporters with access to its properties and access to employees despite a "strict policy" against outsider access to employer properties and against solicitation on work time, and at the same time denied UFW supporters the same access despite requests for equal treatment. The employer alleged that the UFW threatened, intimidated and cursed at a company employee in retaliation for his union activities.

On November 1, 2013, the UFW filed its objections to decertification election held on October 25, 2013 in Dole Berry North. The UFW alleges that the election should be set aside for the following reasons: 1) the employer unlawfully assisted and supported in the gathering of signatures for the petition and unlawfully assisted the petitioner in the decertification campaign; 2) the employer provided unlawful and preferential access to the decertification petitioners; 3) the employer provided an eligibility list with numerous errors preventing the union from communicating with substantial numbers of voters; 4) employer made an unlawful promise of benefit; 5) the employer made material misrepresentations to the workforce; and 6) the petitioner submitted forged signatures in its showing of interest.

The Board shall, within 21 days of the filing of election objections, evaluate the election objections and issue a decision determining which, if any, objections must be set for hearing. Accordingly, the Board's decision on objections is due November 22, 2013.

Although there was no tally of ballots prepared following the election, the Regional Director has been directed to forward to the Board all challenged ballot declarations and all other evidence in his or her possession relevant to the eligibility of the challenged voters and shall serve the same on all parties to the election.

Gerawan Farming, Inc., 2013-RD-003-VIS

On October 25, 2013, Gerawan Farming, Inc. farm worker Silvia Lopez filed a new decertification petition with the ALRB Regional Office. On October 28, 2013, the Salinas ALRB Regional Director dismissed the new petition as untimely because on October 25, 2013, the Board issued its decision as to the Gerawan mediator's report, granting review as to only six provisions, and, in the Regional Director's view, that action by the Board resulted in an executed collective bargaining agreement between Gerawan and the United Farm Workers of America (UFW). The Regional Director concluded that no petition for an election may proceed while there is a collective bargaining agreement in effect. October 28, 2013, later that same day, the Board issued an order vacating the Regional Director's dismissal of the above-captioned petition for decertification. On October 31, 2013, the ALRB Visalia Regional Director issued a letter blocking a decertification petition filed by Sylvia Lopez seeking decertification of the UFW as the representative of the agricultural employees of Gerawan Farming, Inc. (Gerawan). The blocking decision was based on the pendency of several unfair labor practice complaints against Gerawan and would have resulted in the dismissal of the decertification petition. On November 1, 2013, the Board issued an order vacating the Regional Director's decision and ordering that an election go forward. The Board held that, under the unique circumstances of the case, there were sufficient questions concerning the degree to which any taint caused by certain of the alleged unfair labor practices, as well as questions concerning the use of an unfair labor practice complaint issued the day before the decision to block the election, to justify holding the election, impounding the ballots, and resolving the

issues through election objections and litigation of the complaints. The Board ordered the election to be held on Tuesday, November 5, 2013, and the ballots to be impounded pending resolution of any election objections and related unfair labor practice complaints.

On November 1, 2013, the UFW filed a motion to vacate the Board's decision or, in the alternative, for reconsideration of its decision. On November 1, 2013, the Board denied the motion for lack of proper service. The UFW renewed its motion on November 4, 2013 and the Board, on this same day, denied the motion.

The election was held on November 5, 2013, and the ballots were impounded. While the election was taking place, the employer filed a request for review of the Regional Director's decision to segregate the ballots of several crews comprising approximately 800 employees. The petitioner joined in that request and the UFW opposed the request. The Board did not issue an order regarding these filings. Objections to the election are due in five days, i.e., November 13, 2013.

Although there was no tally of ballots prepared following the election, the Regional Director has been directed to forward to the Board all challenged ballot declarations and all other evidence in his or her possession relevant to the eligibility of the challenged voters and shall serve the same on all parties to the election. However, should the evidence include any declarations or statements of non-supervisory agricultural employees other than those of the challenged voters, the regional director shall serve on the parties only a summary of such declarations, prepared in a manner that does not reveal the identity of the declarants. Within ten (10) days of service of the challenged ballot declarations and other evidence, the parties may file with the executive secretary, as agent of the Board, and serve on all other parties to the election, declarations and/or documentary evidence in support of their positions as to the eligibility of the challenged voters, accompanied by argument explaining their positions and the relevance of the proffered evidence. The 21-day period set forth in Labor Code section 1156.3, subdivision (i)(1)(A)(i) shall run from receipt by the Board of the evidence submitted by all parties, or the expiration of the 10-day period to submit evidence, whichever occurs first.

COMPLAINT REPORT

COMPLAINTS ISSUED

Gill Ranch Company, LLC, 2013-CE-022-SAL

The Salinas ALRB Regional Director issued a new complaint in Gill Ranch Company, Inc., Case No. 2013-CE-022-SAL. The complaint alleges that the employer violated the Act by refusing to rehire an employee for the 2013 harvest season in retaliation for his engaging in protected concerted activity. The charging party asked the foreman to move the shade structure closer to the area where work was being

performed and at a meeting with other employees complained about the lateness of the morning break and lack of notice of an employee luncheon. After these incidents, the employee was not recalled and told that there would not be any work for him as he had been replaced.

Gerawan Farming, Inc., 2012-CE-041-VIS

The Visalia ALRB Regional Director issued a new complaint in Gerawan Farming, Inc., 2012-CE-041-VIS. The complaint alleges that the employer violated the Act by refusing to bargain in good faith with UFW by denying its requests for information, implementing unilateral changes to the terms and conditions of employment, disseminating false information about the UFW's representative status and about the work experience of employees involved in union activities, and failing to provide the UFW with a complete and accurate employee list for 2012, 2013 and current employees.

COMPLAINTS WITHDRAWN

None.

THREE HEARINGS SCHEDULED

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

Hearing: November 19, 2013.

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

Pre-hearing: November 13, 2013

Hearing: December 9, 2013.

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

Pre-hearing: January 13, 2014 at 1:00 p.m.

Hearing: February 18, 2014

CASES TO BE RE-SCHEDULED FOR HEARING

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

The hearing was canceled due to the election held on November 5, 2013. The matter needs to be re-scheduled for hearing.

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

The hearing was canceled due to the election held on November 5, 2013. The matter needs to be re-scheduled for 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 Executive Secretary granted the General Counsel's request for an extension of time to file post-hearing briefs. The briefs are now due December 11, 2013.

ALJ/IHE DECISIONS ISSUED:

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

On November 5, 2013, the Administrative Law Judge issued his decision in this case. The exceptions are due December 2, 2013. Any replies to the exceptions are due December 16, 2013.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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.

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

ALJ's decision issued September 26, 2013.
Exceptions filed October 21, 2013.
Replies, if any, are due November 19, 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. On October 18, 2013, the Board issued its order denying General Counsel and

UFW's motion for reconsideration. The order provides that the parties have 15 days to submit a settlement agreement that conforms to Administrative Order No. 2013-15. If the parties fail to do so, the Board will resume sole jurisdiction over compliance in 93-CE-37-VI and 2012-MMC-001 and schedule a settlement conference with the parties toward the goal of achieving settlement of all matters within the Board's sole jurisdiction without the agency of the General Counsel. On November 4, 2013, the Board granted the General Counsel's request for an extension of time to file a formal bilateral settlement agreement in compliance with the Board's administrative orders. The Board only granted a two-week extension and the settlement statement is due November 19, 2013.

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

The matter is pending before the Board for decision.

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

Exceptions are due October 24, 2013.

Replies, if any, are due November 7, 2013.

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

Exceptions filed October 21, 2013.

Replies, if any, are due November 19, 2013.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

BOARD DECISIONS/ADMINISTRATIVE ORDERS:

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

On October 18, 2013, the Board issued its order denying General Counsel and UFW's motion for reconsideration. The order provides that the parties have 15 days to submit a settlement agreement that conforms to Administrative Order No. 2013-15. If the parties fail to do so, the Board will resume sole jurisdiction over compliance in 93-CE-37-VI and 2012-MMC-001 and schedule a settlement conference with the parties toward the goal of achieving settlement of all matters within the Board's sole jurisdiction without the agency of the General Counsel.

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 Board granted the employer's request for reconsideration

and issued its decision on this matter on October 23, 2013. Any petition for writ of review of this decision is due in thirty (30) days, i.e., November 22, 2013.

Gerawan Farming, Inc., 2013-MMC-003

On October 25, 2013, the Board issued its decision in Gerawan Farming, Inc. The Board granted Gerawan's petition for review on six provisions in the mediator's report and remanded the matter to the mediator to resolve the problems identified by the Board. In all other respects the Board affirmed the mediator's report because Gerawan failed to show that the mediator's findings of material fact were clearly erroneous, or that the provisions fixed in his report were arbitrary or capricious in light of his findings of fact.

Gerawan Farming, Inc., 2013-RD-003-VIS

On October 28, 2013, the Board vacated the Regional Director's October 28, 2013 dismissal of the petition for decertification as the issue of whether certain terms of the mediator's report in case number 2013-MMC-003 should be immediately implemented pursuant to the Board's decision and order Gerawan Farming, Inc. (2013) 39 ALRB No. 16 was already under review by the Board upon a request filed by the UFW on October 25, 2013. Admin. Order No. 2013-44.

Gerawan Farming, Inc., 2013-MMC-003

On October 30, 2013, the Board denied the UFW's request for an order directing the employer to implement the terms contained in the Mediator's Report to the extent that the Board did not grant review of those terms. The Board's ruling was consistent with the clear words of the statute and ruling otherwise could result in piecemeal litigation of the mediator's report. Admin. Order No. 2013-45.

Gerawan Farming, Inc., 2013-RD-003-VIS

On November 1, 2013, the Board issued its decision vacating the Regional Director's October 31, 2013 decision to block the decertification petition. Admin. Order No. 2013-46.

Gerawan Farming, Inc., 2013-RD-003-VIS

On November 4, 2013, the Board issued its order denying the UFW's motion to vacate the decision or, in the alternative, to reconsider its decision. The Board held that the motion was not properly filed with the Board. Admin. Order No. 2013-47.

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

On November 4, 2013, the Board issued its order granting the General Counsel motion for an extension of time to file a formal bilateral settlement agreement in compliance with Administrative Orders 2013-35 and 2013-42. The Board granted a two-week extension of time and set the due date for filing the agreement for November 19, 2013. Admin. Order No. 2013-48.

Gerawan Farming, Inc., 2013-RD-003-VIS

On November 4, 2013, the Board issued its order denying the UFW's motion to vacate the decision or, in the alternative, to reconsider its decision. Admin. Order No. 2013-48.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

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 October 26, 2013, Mediator Goldberg advised the Executive Secretary that he had received the UFW's motion for order directing parties to negotiate and for order to set final mediation date in Arnaudo Brothers, 2013-MMC-01. He had scheduled a conference call for October 28, 2013, and planned to rule on that motion at that time. This office is unaware of the mediator issued a ruling on that date.

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 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. On October 18, 2013, the UFW filed a motion for order directing parties to negotiate and for order to set final mediation date. The motion was submitted to the mediator, and alternatively to the Board, for an order requiring the parties to complete the MMC process by November 19, 2013. The mediator's final report is pending.

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. The case arose from the application of Napoles for a preliminary injunction that would prevent the Board from taking any action contingent on the certification of the UFW as the bargaining representative of Arnaudo's agricultural employees. Napoles argued, among other things, that the UFW disclaimed its interest in representing Arnaudo's employees and, for this reason, the UFW was no longer the bargaining representative and the ALRB's prior referral of Arnaudo and the UFW to Mandatory Mediation and Conciliation was invalid. The Board and the UFW argued, among other things, that Labor Code section 1164.9 vested authority to review ALRB decisions exclusively in the courts of appeal and that, accordingly, the Superior Court lacked jurisdiction to issue an injunction and to hear the case. 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. The Board and the UFW have opposed the request and a decision by the Court is pending. On October 16, 2013, the court issued an order denying the application for preliminary injunction and dismissing petition for writ of mandate and declaratory relief.

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.

On October 15, 2013, Gerawan filed a petition for review with the Board seeking review of virtually all of the mediator's report. On October 25, 2013, the Board issued its decision in Gerawan granting review on six provisions in the mediator's report and remanding the matter to the mediator to resolve the problems identified by the Board. In all other respects the Board affirmed the mediator's report because Gerawan failed to show that the mediator's findings of material fact were clearly erroneous, or that the provisions fixed in his report were arbitrary or capricious in light of his findings of fact.

On October 25, 2013, the UFW filed with the ALRB a request for an order immediately implementing certain provisions of the report of mediator Matthew Goldberg (the "Mediator") in a Mandatory Mediation and Conciliation ("MMC") case between the UFW and Gerawan Farming, Inc. ("Gerawan"). After the Mediator's report issued, Gerawan had filed a petition for review of the report which challenged essentially all of its provisions. The Board accepted review of six of the provisions, and denied review as to the remainder. (Gerawan Farming, Inc. (2013) 39 ALRB No. 16.) The UFW argued that all the provisions of the report except for the six provisions accepted for review should go into immediate effect. On October 30, 2013, the Board issued its order disagreeing with the UFW. The Board noted that Labor Code 1164.3 required that, while provisions of a report that are not challenged go into immediate effect, any provision that is the subject of a petition for review does not go into immediate effect regardless of the scope of the provisions the Board accepts for review. Given that the statutory language was not ambiguous and did not lead to absurd results, the Board concluded that it was required to apply the statute according to its plain meaning

and deny the UFW's request. Where the Board orders additional mediation, as it has done in this case, the mediation shall commence within thirty (30) days of the issuance of the Board's order, or as soon as practical.

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. On October 23, 2013, the ALRB informed the court that the parties have until November 4, 2013 to file a settlement agreement for the Board's approval that complies with a previous Board order. That settlement agreement would include settlement of the matter that is currently lodged before the court. The ALRB requested the court's indulgence for more time to pursue settlement of this and other matters between the parties. The ALRB further asked the court's indulgence to file a status update on November 8, 2013. On November 4, 2013, the Board issued its order granting the General Counsel motion for an extension of time to file a formal bilateral

settlement agreement in compliance with Administrative Orders 2013-35 and 2013-42. The Board granted a two-week extension of time and set the due date for filing the agreement for November 19, 2013. Admin. Order No. 2013-48. The court needs to be apprised of this update.

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, 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 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. On October 16, 2013, the court issued an order denying the application for preliminary injunction and dismissing petition for writ of mandate and declaratory relief. No appeal of this ruling has been sought.

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.

Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et al., Case No. 13CECGO3374 MWS

On October 29, 2013, the Board and Executive Secretary were personally served with 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 violated the US and California State Constitutions by denying a worker's request to attend mandatory mediation and conciliation sessions between the United Farm Workers and Gerawan Farming, Inc. The lawsuit seeks a declaration that the Board's August 21, 2013 decision and order is unconstitutional under the US and CA Constitutions, a declaration that the MMC proceedings conducted pursuant to the Board's April 16, 2013 decision and order are null and void, for preliminary and permanent injunctive relief, for damages, costs, and attorney fees incurred and for such other relief as the court may deem proper. The Board has 30 days in which to file a response to the lawsuit. The Attorney General's Office is representing the Board in this matter.

MISCELLANEOUS:

The Regional Directors' Quarterly Meeting was canceled due to the Gerawan election and will be rescheduled.

On November 1, 2013, a Public Records Act request was filed by the United Farm Workers requesting communications concerning the holding of the Gerawan representation election.

5. General Counsel's Report: The General Counsel reported that her staff did a fabulous job and worked incredibly hard conducting the election at Gerawan Farming, Inc. on short notice. As much information as possible was gathered regarding the numerous challenges. Ms. Torres-Guillén was grateful to Department of Industrial Relations Director Christine Baker and her staff for their help. The General Counsel intends to submit a request for additional staff to be able to conduct elections, prehearings, trials and investigations in a timely manner. The Executive Secretary reminded the General Counsel of the statutory timelines affecting the two recent elections and advised her that election cases take priority over other matters on the hearing calendar. Therefore, some matters may have to be rescheduled. Ms. Torres-Guillén asked the Board to address the issue of relocating both the El Centro and Visalia offices. The General Counsel believes the office space in Visalia is too small and unmanageable. She would prefer to move the office to Fresno. The Chair assured Ms. Torres-Guillén that the Board will be gathering background information to make a decision regarding the offices. The Board will request public input before selecting new office locations. Since there is no money allotted in this year's budget to finance a move, the General Counsel will include a request for funding in a budget change proposal.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – Meetings regarding the outreach project were postponed due to the two recent elections
- b. Annual Report – Due to the elections, work has not moved forward on this project.
- c. Election Manual – Nothing new to report.
- 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 voted 3-0 to approve the updated Procurement and Procedures Manual.
- f. Capitol Morning Report Subscription Renewal—The Board voted 2-0, with Member Mason abstaining, to renew the subscription to the California Morning Report.

7. Regulations – Discussion of Potential Subjects for Rulemaking In 2012: Items listed in the Rulemaking Calendar (Unit Clarification Procedure, Voter Eligibility Exclusions (Family Members), Exculpatory Evidence, Electronic Filing).

Board Counsel Heyck attended a three-day training session at Office of Administrative Law class entitled *Rulemaking Under the California APA*. The Chair suggested reconsidering electronic filing. Member Mason recommended the Board review the Mandatory Mediation and Conciliation regulations to possibly clarify procedures.

8. Legislation – There is no new legislation.

9. Personnel – Progress on filling ALRB position. Interviews for Senior Board Counsel will commence the week of November 18th. Jose Gonzalez of the Salinas Regional Office will be leaving the department on November 15th.

10. Roundtable – Nothing to report.

The public meeting adjourned at 10:25 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.