

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Employment Development Department Auditorium  
722 Capitol Mall  
Sacramento, CA 95814**

**March 20, 2014**

Time: 9:30 a.m.  
Members Present: Chairman Gould, Members Shiroma and Rivera-Hernandez  
General Counsel: General Counsel Torres-Guillén  
Staff Present: Executive Secretary Barbosa; Special Board Counsel Starkey; ALJ Soble; Board Counsel Heyck, Dixit and Inciardi; Analyst Massie; Regional Directors De La Cruz and Shawver; Staff Counsel Blanco; Assistant General Counsel Peña and Gaitan  
Others: Christopher Valadez, Director, Environmental and Regulatory Affairs, California Grape and Tree Fruit League

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for December 4, 2013 were approved 2-0, with Chairman Gould abstaining.
2. **Public Comment:** None.
3. **Chair's Report:** Chairman Gould introduced himself and described his vast experience as an arbitrator, scholar and chairman of the National Labor Relations Board. He stated he accepted this position because he wanted a chance to give back to the State of California which has been so generous to him. Chairman Gould took up a similar task 20 year ago when he became chairman of NLRB. That was a great challenge and this will also be a great challenge. Mr. Gould has a sense of the desperate circumstances of those who toil. His great-grandparents were born into slavery. Upon escaping slavery, his great-grandfather fought with the Navy during the Civil War. During the 1920's and 1930's, his father was a victim of the Great Depression as well as racial discrimination. Workers, unions and employers are all critical parts of our role to enforce the statute in a balanced way that takes into account the facts of each case and practical necessities. Chairman Gould thanked his colleagues for their warm welcome and expressed his appreciation to be working with everyone during his term.

The Agricultural Labor Relations Board's hearing before the Senate Budget Subcommittee No.2 is scheduled for April 24, 2014 at 9:30 a.m. or upon adjournment of session in Room 112. The prehearing is scheduled for April 11, 2014 with the time to be determined.

#### **4. Executive Officer Report:**

##### **ELECTION REPORT**

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

No new notices of intent to take access (NAs) have been filed since the Board's last meeting on December 4, 2013.

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

No new notices of intent to organize (NOs) have been filed since the Board's last meeting on December 4, 2013.

**PENDING ELECTION MATTERS** – Three election matters are pending: Two before the Board and one on review before the appellate court.

##### **D'Arrigo Bros. of California, 2010-RD-004-SAL**

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. All briefing has been completed and the matter is pending oral argument or decision.

##### **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). An election was held on October 25, 2013 but the regional director impounded the ballots based on the filing of charges by both the employer and union. On November 1, 2013, the UFW filed six objections alleging unlawful employer assistance, unlawful employer assistance by disparate treatment, a defective eligibility list, an unlawful promise of benefit, misrepresentation, and forged signatures. On November 22, 2013, the Board issued its decision on the UFW's election objections.

On November 22, 2013, the Regional Director forwarded to the Board all challenged ballot declarations and all other evidence in her possession relevant to the eligibility of the challenged voters. On December 4, 2013, the Employer filed with the Executive Secretary declarations and/or documentary evidence in support of its

position as to the eligibility of the challenged voters, accompanied by argument explaining its positions and the relevance of the proffered evidence. The record on challenged ballots is now complete and a Board decision on the challenged ballots is pending.

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

On October 25, 2013, Gerawan Farming, Inc. farm worker Silvia Lopez filed a second decertification petition with the ALRB Regional Office. An election was held on November 5, 2013 but the ballots were impounded pending resolution of election objections and related unfair labor practice complaints.

On November 7, 2013, the Board issued an order directing the Regional Director to forward to the Board all challenged ballot declarations and all other evidence in his possession relevant to the eligibility of the approximately 680 challenged voters and to serve the same on all parties to the election by November 21, 2013. The Regional Director complied with the Board's Order and forwarded the challenged ballot declarations to the Board. The Regional Director also provided approximately 10,000 pages of documents to the Board to determine which documents should be turned over to the parties as responsive to the Board's Order. On December 13, 2014, the employer submitted its response to the Regional Director's submission. Neither party filed a reply to the other parties' evidence and argument.

On March 12, 2014, the Executive Secretary issued a notice of hearing setting UFW's Objection No. 1 and the amended complaint in Case Number 2013-CE-027-VIS for hearing on May 6, 2014. On March 18, 2014, the General Counsel filed an objection to the notice of hearing and requested that the notice be rescinded and that the assigned Administrative Law Judge set this matter for hearing after the General Counsel has completed her investigation of two related unfair labor practice charges, i.e., ULP charges 2013-CE-027-VIS and 2013-CE-039-VIS. The Executive Secretary has set a deadline of March 25, 2014 for the parties to respond to the General Counsel's objection.

### **Notice of Receipt of Prohibited Communications Regarding Gerawan Election and MMC Cases**

On November 19, 2013, the Executive Secretary advised the parties that Board Counsel Terrie Robinson had reported a prohibited communication. On December 13, 2013, Counsel for Gerawan requested 1) a more complete statement concerning this incident, 2) an investigation whether UFW made additional ex parte communications and 3) that the agency remedy the wrongdoing. A follow up letter was sent by Gerawan on February 25, 2014 complaining that Gerawan had not received a response to its initial letter and was now requesting that this matter be put on the agenda to be addressed in open session at the Board's next meeting on March 20, 2014. On March 5, 2014, the Office of the Executive Secretary responded to both letters. He declined the employer's request to put this matter on the agenda as there

are other available avenues to address his concerns. The Executive Secretary also responded that the statement provided to Gerawan already constituted a detailed statement under the Board's regulation section 20750 (a). The Executive Secretary has not received any further correspondence on this matter following his March 5, 2014 letter response.

## **COMPLAINT REPORT**

### **TWO COMPLAINTS HAVE ISSUED**

#### **Sun World International, Inc., 2011-CE-017-VIS**

On December 24, 2013, the Regional Director for the Visalia ALRB Regional Office issued a complaint against Sun World International, Inc. The complaint alleges that the employer, through its farm labor contractor M&G FLC, allegedly threatened and coerced its employees who refused to sign a petition in opposition to Senate Bill 104 (card check legislation). The complaint is scheduled for hearing on April 1 and 2, 2014.

#### **P&M Vanderpoel Dairy, 2013-CE-016-VIS**

On December 24, 2013, the Regional Director for the Visalia ALRB Regional Office issued a complaint against P&M Vanderpoel Dairy. The complaint alleges that the employer threatened, coerced and retaliated against several workers because they engaged in protected, concerted activity, i.e., several workers discussed and approached their supervisor to request a \$1.00 raise and then were allegedly fired. The hearing was held on February 11 and 12, 2014 and the post-hearing briefs are due April 7, 2014.

### **COMPLAINTS WITHDRAWN**

None.

**SIX HEARINGS SCHEDULED** – There are six cases currently on calendar. Of the six, two are scheduled in April (Sun World International, Valley Pride, Inc.), two in May (Gerawan Farming, Inc. (consolidated election/ULP case) and D'Arrigo Bros. of California), one in June (RBI Packing, LLC), and one case to be re-scheduled to a later date following the hearing on election objection/amended complaint (Gerawan Farming, Inc. (ULP case)).

#### **Sun World International, Inc., 2011-CE-017-VIS**

Pre-hearing Conference was held March 6, 2014.

Hearing: April 1 and 2, 2014 (two days)

**Valley Pride, Inc., 2012-CE-044-VIS**

Prehearing conference: 04/8/14 @ 1 PM

Hearing: April 29, 2014 (4 days)

**Gerawan Farming, Inc., 2013-RD-003-VIS and 2013-CE-027-VIS**

Pre-hearing: April 4 @ 1:30 PM

Hearing: May 6, 2014 (to be determined)

**Gerawan Farming, Inc., 2013-CE-010-VIS & 2012-CE-041-VIS**

Pre-hearing: April 4 @ 1:30 PM

Hearing: May 6, 2014 (to be rescheduled after consolidated election and ULP hearing) (10 days)

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

On February 20, 2014, the Executive granted the Respondent's request to withdraw its request for a continuance and granted the Respondent and UFW's joint request for a six-day continuance to pursue settlement of the case.

April 1, 2014: Parties to advise Executive Secretary on status of settlement negotiations.

April 16, 2014: telephone conference to discuss matters preliminary to re-scheduled hearing.

Hearing: May 28, 2014 (10 days)

**RBI Packing, LLC, 2013-CE-002-VIS**

Telephone Conference held 02/26/14

Settlement Conference previously scheduled for 03/24/14 in Coachella is taken off calendar.

Second settlement telephone conference: 03/20/14 @ 1:30

Prehearing conference: 04/03/14

Hearing: June 17, 2014 (5 days)

**CASES TO BE SCHEDULED FOR HEARING**

**Ace Tomato Company, Inc., 2012-CE-007-VIS, et al.**

**Ace Tomato Company, Inc., 93-CE-37-VI**

**HEARINGS IN PROGRESS**

None.

**THREE CASES SETTLED AT HEARING**

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

The hearing was taken off calendar on December 9, 2013 as the parties reached an informal settlement agreement.

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

The hearing was taken off calendar on February 3, 2014 as the parties reached an informal bilateral settlement agreement.

**Fresh Origins, LLC, 2012-CE-032-VIS**

The parties reached a bilateral informal settlement agreement on the first day of the hearing on February 24, 2014. This matter is fully resolved and is pending compliance.

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

There are two cases pending post-hearing briefs:

**P&M Vanderpoel Dairy, 2013-CE-016-VIS**

The hearing was held February 11 and 12, 2014. The post-hearing briefs are due April 7, 2014.

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

The hearing ended January 20, 2014. Post-hearing briefs are due April 11, 2014.

**TWO ALJ/IHE DECISIONS HAVE ISSUED:**

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

ALJ decision issued January 14, 2014.

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

ALJ decision issued February 20, 2014.

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

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

**ALJ decision issued February 20, 2014.**

Exceptions due April 21, 2014.

Reply to exceptions due May 5, 2014.

**CASES PENDING BOARD DECISION OR ACTION (10 cases):**

**Perez Packing, Inc., 2014-MMC-001**

The matter is pending before the Board for decision on the UFW's declaration requesting referral to mandatory mediation pursuant to Labor Code section 1164(b).

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

The matter is pending before the Board for decision on the UFW and the employer's petitions for review of the mediator's report.

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

The matter is pending before the Board for decision on the employer's exceptions to the ALJ decision.

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

The matter is pending before the Board for decision on the employer's exceptions to the ALJ decision.

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

The case is pending decision before the Board for on respondent's motion for stay of all proceedings and enforcement during pendency of Board-ordered settlement negotiations. A settlement conference was held on January 24, 2014 in Stockton CA.

**Gerawan Farming, Inc., 2013-CE-027-VIS**

The matter is pending before the Board for decision on request for review of ALJ ruling re Petitioner's petition to revoke subpoena duces tecum issued by the General Counsel.

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

The matter is pending before the Board for decision on exceptions to the ALJ's decision.

**Corralitos Farms, LLC (UFW), 2013-CL-008-SAL**

The matter is pending before the Board for decision on General Counsel's motion for Board decision based on stipulated facts and record.

**Gerawan Farming Inc. (Silvia Lopez) 2013-RD-003-VIS**

The case is pending decision on challenged ballots and Silvia Lopez' petition for temporary stay of the MMC proceedings.

**Dole Berry North, 2013-RD-001-SAL**

The case is pending decision on challenged ballots.

**CASES REFERRED TO COMPLIANCE**

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

On December 30, 2013, the Board issued its decision and order in H&R Gunlund Ranches, Inc. Any petition for writ of review was due on January 29, 2014. As neither party sought review of the Board's decision, this matter is now released to the Visalia ALRB Office for compliance.

## **COMPLIANCE CASES CLOSED:**

None.

## **BOARD DECISIONS/ADMINISTRATIVE ORDERS:**

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

On December 19, 2013, the Board issued its decision affirming the ALJ's decision but disagreeing with part of the analysis.

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

On December 30, 2013, the Board issued its decision and order in H&R Gunlund Ranches, Inc. Any petition for writ of review was due on January 29, 2014. As neither party sought review of the Board's decision, this matter was released for compliance on February 3, 2014.

## **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. 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.

On January 21, 2014, the UFW transmitted the hearing transcript dated December 16, 2013 that both the employer and union agreed constituted the Mediator's final report. On January 30, 2014, the Agricultural Labor Relations Board (the "Board") received a "Petition for Review of Mediator's Report" from the United Farm Workers of America (the "UFW"). The UFW contends that the report of the mediator was based on clearly erroneous findings of fact and was arbitrary and capricious.

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

See court litigation for court case also involving this case.

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

On March 30, 2013, the UFW filed a second amended declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Gerawan Farming, Inc. to mandatory mediation and conciliation. On September 30, 2013, the mediator filed his initial report on mandatory mediation.

On November 6, 2013, the mediator submitted his second and final mediator's report. Neither party filed a petition for review of the mediator's second report.

On November 19, 2013, the Board ordered that the mediator's second report take immediate effect as a final order of the Board. The Board incorporated by reference its earlier decisions that addressed various claims made by Gerawan. Those orders, together with this Order, constitute the final order of the Board subject to review pursuant to Labor Code section 1164.5.

On December 16, 2013, Gerawan Farming, Inc. filed a petition for writ of review of the Board's decision in 39 ALRB No. 17 with the 5<sup>th</sup> District Court of Appeal. See court litigation, Gerawan Farming, Inc. v. ALRB, F068526, for further information.

#### **Perez Packing, Inc., 2014-MMC-001**

On January 21, 2014, the UFW faxed a copy its declaration requesting that the Board issue an order directing the parties, the UFW and Perez Packing, Inc., to mandatory mediation pursuant to Labor Code section 1164(b). On January 24, 2014, the employer filed its answer and argument in response to the UFW's declaration. The Board's decision on the MMC petition is pending.

### **COURT LITIGATION/BOARD**

#### **Ace Tomato Company, Inc., 5 DCA. Case No. F065589**

On August 24, 2012, Ace Tomato Company (Ace) filed a petition for writ of review Fifth District Court of Appeal (5 DCA) seeking appellate review of the Board's decision in 38 ALRB No. 6 and a stay of that decision. In that decision, pursuant to the Mandatory Mediation and Conciliation (MMC) provisions of the Agricultural Labor Relations Act, the Board in 38 ALRB No. 6 affirmed the mediator's report fixing the terms of a collective bargaining agreement between Ace and the United Farm Workers of America (UFW), the certified representative. In August 2012, the Board and the UFW separately filed 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 Third District Court of Appeal (3 DCA). 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 5 DCA issued two orders. One order denied the request to transfer the case to the 3 DCA, without prejudice to filing a request directly with the California Supreme Court. The other order granted Ace's request to stay the Board's decision pending court review. On October 25, 2012, the UFW filed an opposition to Ace's motion to augment the record, which the Board joined. On October 31, 2012,

the Board filed a petition for rehearing on proper venue. On November 14, 2012, the Board filed its response brief on the merits and on December 7, 2012, the UFW filed its response. Ace filed its reply brief on January 16, 2013. On February 13, 2013, the 5 DCA issued a writ to have the case heard. The court denied the Board's petition on venue, and kept the stay in effect.

On September 24, 2013, the court by letter directed the parties to inform the court about the status of the case and whether it had settled. On October 23, 2013, the Board informed the court of the status of settlement and asked leave to file a status update. On November 4, 2013, the Board issued its order (Admin. Order No. 2013-48) granting the General Counsel's motion for an extension of time to November 19, 2013, to file a formal bilateral settlement agreement in compliance with Administrative Orders 2013-35 and 2013-42. On November 12, 2013, the Board so informed the court of the settlement status. On November 25, 2013, the Board further advised the court that the parties were unable to reach settlement and that the Board had decided to meet directly with the parties to facilitate settlement. At the Board's request, the court agreed to the case in abeyance pending settlement attempts.

ALJ Thomas Sobel is serving as settlement judge. A settlement conference was held on January 14, 2014.

**D'Arrigo Brothers Company of California, 4DCA, Div. 1, Case No. D063886**

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 was filed on December 16, 2013 and the UFW's brief was filed on December 17, 2013. The petitioner requested and was granted a 59-day extension of time to file its reply brief. Petitioner's brief was filed on March 13, 2014.

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

On May 17, 2013, Lupe Garcia, an individual worker employed by Gerawan, filed a petition and complaint, alleging the Board's April 16, 2013 order referring the parties to MMC (39 ALRB No. 5) is facially invalid under the due process clause of the U.S. and California Constitutions. The petition also alleges that the Board's ruling violates the workers' First Amendment rights to freedom of speech and association, as well as equal protection rights. On August 7, 2013, Garcia asked the court to stay MMC proceedings pending resolution of his request to intervene in the MMC proceedings, which the court denied for lack of standing. On August 30, 2013, the Board filed its answer to the petition and complaint. The matter is set for trial on November 10, 2014.

**Premiere Raspberries, LLC, 6 DCA. Case Number H039793**

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. ALRB et al., Fresno County Superior Court, Case No. 13 CECG 03374 (1<sup>st</sup> Amendment)**

On October 28, 2013, Gerawan filed an action in Fresno County Superior Court against the Board, its individual members, and its Executive Secretary, in which Gerawan claims that the Board violated the U.S. and California Constitutions by denying a worker's request to attend MMC sessions between Gerawan and the UFW. The lawsuit seeks a declaration that the Board's August 21, 2013 decision and order is unconstitutional, a declaration that the MMC proceedings conducted pursuant to the Board's April 16, 2013 decision and order are null and void, orders for preliminary and permanent injunctive relief, and for damages, costs, and attorney fees.

The Board's filed its demurrer on December 17, 2013. Gerawan filed its opposition on February 5, 2014. After continuances, the court heard the Board's demurrer on March 13, 2014, and then allowed supplemental briefing, which was filed on March 20, 2014. The matter is pending decision of the court.

On December 20, 2013, Lupe Garcia filed a motion to intervene in the case, alleging that his individual rights had been denied. The Board filed its opposition to the motion to intervene on January 8, 2014. The hearing on the motion to intervene was heard February 11, 2014. The matter is pending decision by the court.

**Francisco Napoles v. ALRB, 3 DCA, Case No. C075213**

On November 20, 2013, the Francisco Napoles filed a notice of appeal with the Third District Court of Appeal (3 DCA) from the decision of the San Joaquin County Superior Court that it lacked jurisdiction to issue an injunction and hear the matter. In the superior court action, Napoles had claimed the Board had exceeded its powers when it referred Arnaudo and the UFW to MMC because the UFW allegedly disclaimed its interest in representing the bargaining unit and was no longer the certified representative, that the MMC proceedings violated 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 December 19, 2013, Napoles filed in the 3 DCA a petition for writ of supersedeas and request for immediate stay in connection with his appeal, which, if granted, would have precluded any enforcement of the UFW's certification pending the outcome of his appeal. On December 23, 2013, the Board filed its opposition to the request for an

immediate stay. On January 3, 2014, the Board filed its opposition to the writ of supersedeas. The UFW's opposition was filed on January 17, 2014. On January 23, 2014, the court denied the stay request.

On February 4, 2014, Napoles filed a petition for review in the California Supreme Court, Case No. S216287, seeking reversal of the appellate court's denial of the stay request and requesting that the Supreme Court order an immediate stay to prevent enforcement of the UFW's certification. The ALRB answered the petition on February 25, 2014. The court denied the petition and request for stay on February 26, 2014.

**United Farm Workers (San Joaquin Tomato Growers) v. ALRB, 3 DCA, Case No. C075210**

On November 22, 2013, the UFW filed with the 3 DCA a petition for writ of review of the Board's decision in 39 ALRB No. 15.

On November 27, 2013, Real Party in Interest San Joaquin Tomato Growers (SJTG) notified the 3 DCA that SJTG had filed a case concerning the same Board decision in the 5 DCA on November 22, 2013. On December 9, 2013, SJTG then filed a motion with the court asking that the case be transferred and consolidated with the case on file with the 5 DCA. On January 9, 2014, the 3 DCA denied SJTG's motion for transfer of the case to 5 DCA without prejudice to filing a request to transfer with the California Supreme Court.

On January 16, 2014, SJTG filed a petition with the California Supreme Court to transfer and consolidate the UFW's petition for review in the 3 DCA with SJTG's petition for review in the 5 DCA. On January 27, 2014, the Supreme Court rejected SJTG's petition to transfer as filed in error. On February 14, 2014, SJTG filed a second petition for review with the Supreme Court (Case No. S216519). The UFW answered on March 6, 2014. Real Party in Interest San Joaquin filed a response to the answer to March 13, 2014. The Supreme Court denied the petition to transfer on March 19, 2014.

The certified record was filed with the 3 DCA on January 9, 2014. On February 6, 2014, the UFW filed a joint stipulation extending the due date for the filing of the opening brief to March 20, 2014, which the court granted on February 6, 2014.

**San Joaquin Tomato Growers (SJTG) v. ALRB, 5 DCA, Case No. F068406**

On November 22, 2013, SJTG filed a petition for writ of review of the Board's decision in 39 ALRB No. 15 with the 5 DCA. On January 7, 2014, the Board filed the certified record with the court. On January 24, 2014, SJTG filed a request for a 59-day extension of time to file its opening brief. The court granted the request and the opening brief is now due on April 11, 2014. On January 31, 2014, the court granted SJTG's request to file an opening brief in excess of 14,000 words/fifty pages.

**Gerawan Farming, Inc. v. ALRB, 5 DCA, Case No. F068526 (appeal of MMC decision)**

On December 16, 2013, Gerawan filed in the 5 DCA a petition for writ of review and stay of the Board's decision in 39 ALRB No. 17. On December 23, 2013, the Board filed its opposition to Gerawan's request for temporary stay. On January 7, 2014, Gerawan filed its response to the Board's opposition. Also on January 7, 2014, UFW filed its opposition to the request for stay and preliminary opposition to petition for writ of review. On January 14, 2014, Gerawan filed its response to the UFW's opposition to the stay request and preliminary opposition to petition for writ of review. On February 10, 2014, the parties requested to consolidate cases nos. F068526 and F068676. On February 11, 2014, the court denied Gerawan's request for temporary stay. Also on February 11, 2014, the court granted Gerawan's request for judicial notice filed February 10, 2014 and deferred the parties' request for expedited schedule due to the pending request for consolidation of cases nos. F068526 and F068676. The Board's brief is due on March 20, 2014.

**Gerawan Farming, Inc., 5 DCA, Case No. F068676**

On January 15, 2014, Gerawan Farming Inc. (Gerawan) appealed from the September 26, 2013 order of the Fresno County Superior Court (Judge Black) denying its petition for writ of mandate. On January 27, 2014, Gerawan filed its mandatory case information statement. On February 10, 2014, the court deferred ruling on appellant's January 27, 2014 request for consolidation of cases nos. F068526 and F068676 and directed that the cases be briefed separately but coordinated so that they may be considered by the same panel for hearing. Briefing will follow the record on appeal being prepared.

**Perez Packing, Inc., 5 DCA, Case No. F068697**

On January 17, 2014, Perez Packing, Inc. (Perez) filed in the 5 DCA a petition for writ of review of the Board's decision in 39 ALRB No. 19. The certified record was filed with the court on February 3, 2014. Perez's opening brief was filed March 10, 2014. The Board's brief is due April 14, 2014.

**Lopez v. Shiroma, et al., E.D. Cal. Case No. 1:14-CV-00236-LJO-GSA**

On February 20, 2014, Gerawan employee and petitioner, Silvia Lopez, filed a lawsuit in the United States District Court, Eastern District (Fresno) seeking an order to have the Board tally and disclose the ballots in the decertification election involving Gerawan and the UFW (ALRB Case No. 2013-RD-003-VIS). The ALRB has obtained an extension of time to respond to the complaint to April 21, 2014.

**MISCELLANEOUS:**

The California Political Reform Act requires designated employees of state agencies and boards to file annual statements of economic interest (SEIs) on a standardized form (Form 700). The Form 700 is due by April 1, 2014.

## 5. General Counsel's Report:

The General Counsel welcomed Chairman Gould and introduced members of her staff who were present.

Ms. Torres-Guillén updated the Board on the status of charges, complaints, settlements, litigation and hearings being handled in the regional offices. The General Counsel expressed her gratitude for the commitment of staff in the regions. Ms. Torres-Guillén spoke of the successful use of subpoena enforcement and temporary restraining orders.

Ms. Torres-Guillén reported there has been quite a bit of outreach work conducted by the regions. Presentations have been made to growers, supervisors, owners and farmworkers at a variety of events including AgSafe conferences, migrant worker events, and school district migrant parents night.

## 6. Special Projects

- a. Annual Report – The report has been delayed due to the press of business but work has now resumed and is expected to be completed soon.
- b. 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 was submitted to the Labor and Workforce Development Agency on December 31, 2013. On March 19, 2014, the Department of Finance (Finance) accepted our report as submitted and is in the process of reviewing the report.

**Single Audit Management Representation Letter for Fiscal Year 2012-13**  
The Department of Finance, Office of State Audits and Evaluations (Finance), is requesting our annual management representation letter (MRL), which is required as part of the State's single audit. As part of its annual audit of the State, the Bureau of State Audits (State Auditor) requests Finance to make certain representations regarding the financial operations of the State. To allow the Director of Finance to submit a single MRL to the State Auditor, agencies and departments are required to submit a MRL on their operations for the fiscal year ended June 30, 2013. Individual agency and department MRLs provide the basis for the statewide MRL. The letter is signed by both appointing powers.

### **Annual Statewide Property Inventory Verification & Certification**

DGS will be contacting identified agency property coordinators to update our department inventories on real property and facilities. On or before July 1, 2014,

the head of agency shall certify that the agency has accurately and completely reported all property information required by Govt. Section 11011 et seq.

- c. Facilities Update – *Request for Comment re Relocation of El Centro and Visalia Offices*. The ALRB has two regional offices, one in Salinas and one in Fresno, and two subregional offices, one in Oxnard and one in El Centro. Last year the General Counsel proposed moving the Visalia Regional Office about 43 miles to Fresno and moving the El Centro Subregional Office 75 miles northwest to Mecca. From February 21, 2014, to March 12, 2014, the Board solicited comments regarding the proposal to move the El Centro Subregional Office to Mecca and the Visalia Regional Office to Fresno. There were two reasons to move the Visalia Regional Office: (1) It is not large enough to accommodate current staffing levels, and (2) the Fresno location would be more responsive to the needs of stakeholders. The relocation of the El Centro office would be made so that it too would be in a more responsive area.

The following are comments were received from stakeholders.

David Rosenfeld, an attorney with Weinberg, Roger and Rosenfeld who has practiced for many years before the ALRB and represents agricultural employees, submitted two separate email comments: (1) “Organize”, and (2) “... the site or sites should be constructed and/or remodeled by a union contractor.”

Ian Wieland, an attorney with Sagaser, Watkins & Wieland PC who has practiced before the ALRB and represents agricultural employers, commented that relocating the Visalia office to Fresno makes sense as Fresno is the geographical center of the region and many attorneys that regularly appear before the Board are located in Fresno.

Terry Baro, Administrator Manager for Tutelian & Company, contacted the department regarding office space available in downtown Fresno.

Board Chair Shiroma received an oral comment from Assemblywoman Connie Conway, the Assembly Minority Leader who represents the Visalia area, offering to assist the department in finding an alternative space in Visalia and indicating her preference to keep the office in Visalia.

Jason Resnick, vice president and general counsel of Western Growers Association, indicated his organization opposes the relocation of the El Centro sub-regional office to Mecca. He stated there is no information to justify a move from Imperial County to Riverside County, but the Board should seriously consider altogether closing the sub-regional office and diverting the resources to other needs more fundamental to the Board’s mission. Mr. Resnick suggested that low unfair labor practices and/or low election numbers in Imperial County are meaningless absent a direct comparison to Riverside County. He also notes that Imperial County gross agricultural production exceeds that for Riverside by a \$2.0

billion to \$1.3 billion margin. Mr. Resnick suggested that the decreasing statistics in Imperial County may instead be the result of a “diminution of the union’s value proposition” and increased compliance outreach and education. However, based on the Board’s notice of the physical inadequacies of the Visalia office, his organization supports the relocation of that office

Attorneys Felicia Espinosa and Blaz Gutierrez of California Rural Legal Assistance, Inc. (CRLA) commented that they support the relocation of the Visalia Regional Office to Fresno and the relocation of the El Centro Sub-regional Office to Coachella as a means to better reach and serve the farm-worker population. CRLA notes that Fresno has the largest number of agricultural employees in California and that many other government offices serving farm workers are also located in Fresno. CRLA also supports relocating the El Centro Sub-regional Office to Coachella as a method to allow greater ease of access to a larger number of farmworkers. CRLA does note that the U.S. immigration checkpoint between Riverside and Imperial Counties may pose a deterrent for some farmworkers who fear any interaction with law enforcement regardless of their status, so CRLA encourages the continuation of outreach and scheduled intake days in Imperial County in the event that the El Centro Office is relocated

El Centro Relocation -- The General Counsel commented that her vision was to relocate the El Centro Office to Mecca providing an office in a central location for farm workers. Farm workers make up a large portion of the population in Mecca. There was one office available early on in her search but that site is no longer available. While it may not be possible to move to Mecca, the department could have or once-a-week or every-other-week presence. Other locations in the Coachella Valley to consider would be Coachella or South Indio. Coachella and Mecca are approximately 15-20 miles apart.

Regional Director Shawver spoke about the El Centro to Coachella move. One disadvantage of the Imperial Valley is that many farmworkers live in Mexicali and cross the border at Calexico to either seek work or travel to jobs in the Imperial Valley so they are passing through Calexico either in the early morning or late in the day to their return to their homes in Mexico. Current wages do not enable many farmworkers to live in Imperial County. The town with the most farmworkers in the Imperial Valley is Calexico. The Employment Development Department maintains a presence in Calexico in the Calexico One Stop. The ALRB needs to consider the location of labor intensive crops. Coachella would provide a more solid farm worker base. The three main agricultural areas in the region are Coachella, Blythe, and Imperial. Coachella is the most accessible location for farmworkers and a central location for staff to travel to other areas in the region.

Member Rivera-Hernandez inquired if an office in Calexico would be a better location than El Centro since there has not been any recent activity in the El Centro office. Mr. Shawver indicated that Calexico would be a superior location as compared to El Centro, but a presence in Coachella would benefit

workers greatly. Regional Director De La Cruz envisions establishing collaboration with other agencies, perhaps sharing space with EDD or the Mexican Consulate in Calexico, and establishing connections with the Mecca Family and Farmworker's Service Center.

Member Shiroma shared that David Marguleas of Sun World asked why we were considering moving the El Centro office. He questioned the purpose of having a presence in Coachella Valley when there has not been a lot of activity for some time. Member Shiroma said in response she indicated that Riverside County has the largest farmworker population of the nearby counties and that problems arise when employers or their supervisors are unaware of requirements of the Act. Education will be an important component going forward.

Visalia Relocation – The General Counsel described that Fresno is the center of the Central Valley which has the largest community of farm workers. Fresno County has the largest amount of agricultural production in the area. Other agencies and attorneys providing services to farmworkers and growers are most often are located in Fresno. It is a place that is the heart of the agriculture business. The Visalia office is daily interacting with individuals in the Fresno area. Fresno is heart of business transactions. Cases occur up and down the valley in locations such as Stockton, Tracy, Modesto and Arvin. Fresno is a city with a much larger farmworker population than Visalia. There is a more vibrant farmworker community in Fresno. Farm workers frequently live in Fresno. Tulare County is an important agricultural area as well. While Fresno has grapes, stone fruit and lettuce; Tulare has largest dairy production in the area, but there have been fewer cases involving dairies in the last 5 years. Tulare also has a lot of citrus but there has been little activity. Visalia is approximately 45 minutes south of Fresno and a few miles off the freeway. The Visalia office has very few walk-ins. Most farm workers drive to the office from other valley locations. Mr. Shawver believes travel by staff would be reduced significantly if the office relocated to Fresno. Travel time to the north would be reduced by 45 minutes and travel time to the west side would be reduced significantly. The move would require move travel time to the south area where there is less activity. Relocating to Fresno would reduce the travel burden, make the agency more accessible, and therefore more effective.

Member Shiroma inquired if relocation from Visalia to Fresno would add to the staff's commute time. Mr. Shawver indicated that staff currently live in various cities including Visalia, Dinuba, Parlier and Fresno. Most staff would either need to commute or relocate.

Member Rivera-Hernandez stated the Board is aware that the current space limitations and that the General Counsel has advocated moving the Visalia office because the current space is woefully inadequate. There is no question we need to

find staff a better space. Ms. Rivera-Hernandez thanked Mr. Shawver for his presentation and commented the points Mr. Shawver made were very persuasive.

The General Counsel urged the Board to make a decision as soon as possible. She indicated the Department of General Services (DGS) has been requested to assist in finding a location in Fresno. Ms. Torres-Guillen has reached out to Labor and Workforce Development Agency and Department of Finance regarding funding for the moves. They want to know what DGS says. Once a decision is made, the General Counsel wants to move forward immediately.

Christopher Valdez of the California Grape and Tree Fruit League asked if the Visalia office was relocated to Fresno, would there be a mobile office in Visalia or Tulare. The General Counsel indicated mobile offices in those locations were not currently part of the plan, but she is open to assisting all farm workers. She indicated her staff would be receptive to going to the workers as needed.

Mr. Valdez encouraged the Board to examine the locations of the most labor intensive crops which would suggest where the most farmworkers would be located.

Chairman Gould thanked Mr. Shawver for his presentation. Mr. Gould hopes to visit the regional offices in the next few months. Questions to consider are: Where are the labor intensive areas? Perhaps certain areas do not have activity now, but maybe they will next year or in the future. Where are the masses now? They may be an important part of our caseload. Mr. Gould thanked Mr. Valadez for his comments and assured everyone that this conversation will continue and move ahead. The Chairman stated that while a date has not been set for the Board to vote on the matter of the office relocations, it is one of our most important matters.

Ms. Torres-Guillen thanked Chris Valadez and Barry Bedwell of the California Grape and Tree Fruit League for their input.

- d. Approval of Association of Labor Relation Agencies (ALRA) Annual Dues - The ALRA dues statement has been received in the amount of \$400 for the period from June 1, 2014 through May 31, 2015. The Board approved renewal of ALRA membership by a vote of 3-0.

## **7. Regulations – Approval of Rulemaking Calendar**

The Board approved the proposed ALRB rulemaking calendar by a vote of 3-0.

## 8. Legislation –

### **AB 1457 (Skinner); SB 851 (Leno) (2014-2015 Budget Bills)**

- Introduced January 9, 2014
- Appropriate for support of Agricultural Labor Relations Board (ALRB): \$5,082,000 (Line Item 7300-001-0001)
- Appropriate for support of ALRB, payable from the Labor and Workforce Development Fund: \$1,063,000 (Line Item 7300-001-3078)
- Amount payable from the Farmworker Remedial Account: -\$102,000 (Line Item 7350-001-0023)
- Status:
  - AB 1457, pending referral
  - SB 851, referred to Senate Budget and Fiscal Review (B&FR)

### **SB 25 (Steinberg) ALRB Mandatory Mediation and Conciliation**

- As amended on June 19, 2013, requires the party seeking Mandatory Mediation and Conciliation to file a declaration stating that it has made itself available to the other party for bargaining at reasonable times and places during the applicable period.
- As amended on June 5, 2013, removes provisions that would have changed the definition of “agricultural employer.”
- Eliminates the prerequisite that there be no first contract between the parties for an agricultural employer or labor organization certified prior to January 1, 2003.
- Provides that an action to enforce a Board order making a mediator’s report final could be filed within 60 days without regard to whether the party is seeking judicial review
- Increases the evidentiary threshold for a court to grant a stay of Board order making a mediator’s report final.
- Status: As of September 12, 2013, ordered to Senate Inactive File at the request of Senator Steinberg

### **AB 2575 (Campos) ALRB Annual Report Deadline**

- Introduced February 21, 2014.
- Amends Labor Code section 1143, which requires the Board at the close of the fiscal year to file its annual report to the Governor and the Legislature, to specify that the annual report shall be made within 45 days of the end of the fiscal year (August 14).
- Status: Assigned to Assembly Labor & Employment Committee March 13, 2014 (may be heard March 25).

- 9. Personnel – Progress on filling ALRB positions.** The Board has two new hires since our last Board meeting: Board Counsel Raj Dixit and Special Board Counsel Paul Starkey. The General Counsel has hired four new Assistant General Counsels: Jimmy

Macias in Salinas, John Cohen in Visalia, Andreas Garcia in Oxnard, Jorge Gaitan in Sacramento. The General Counsel also hired a Staff Services Analyst, Leonardo Pescador, in Visalia.

## **10. Roundtable**

ALJ Soble reminded everyone of their responsibility to complete Statements of Economic Interest annually and also when assuming office and leaving office.

The next Board meeting will tentatively be held on April 22 at 9:30 a.m.

The public meeting adjourned at 11:17 a.m.