

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**January 22, 2015**

Time: 9:30 a.m.  
Members Present: Chairman Gould, Members Shiroma and Rivera-Hernandez  
Staff Present: Acting Executive Secretary Starkey; Board Counsel Heyck, Dixit and Inciardi; Legal Secretary Louie, Analysts Cooper and Massie  
Others Present: Chief of Administration Saldivar; Law Student Extern Jenkins; General Counsel Attorney Gaitan; Frances Low, Principal Consultant, Senate Rules Committee; LWDA: General Counsel Woo Sam and Vianey Garcia

**OPEN SESSION**

1. **Approval of Minutes:** Board approved 3-0 the minutes of September 17, 2014, and November 19, 2014.
2. **Public Comment:** None.
3. **Chairman's Report:**
  - **Budget.** The Governor's proposed budget, issued earlier this month, proposes two limited-term administrative law judges for the Board and one limited-term attorney position for the Office of the Executive Secretary. It also calls for funding of the relocation of the El Centro Sub-Regional office to the Coachella Valley and a new Northern California sub-regional office, each staffed with one attorney, one field examiner, and one secretary under the general supervision of the General Counsel. The plan also provides one-time monies for the acquisition of cars for staff travel related to investigations.
  - **Sub-Regional offices.** As outlined at a previous Board Meeting, the authority to authorize relocating and opening new offices rests by statute with the Board. The Board looks forward to expanding the presence of the ALRB through these offices. In anticipation of the Governor's proposal meeting approval by the Legislature and being in place for the new fiscal year starting July 1, efforts are being made by staff to comply with the Department of General Services

requirements and to assure we have monies available in the current year budget for such planning. The goal is to “hit the ground running” in getting offices opened as soon as possible in the new fiscal year. For the new Northern California location, interested parties can anticipate that the Board will seek public comment in advance on potential locations that will be accessible to farmworkers and employers. Chairman Gould commended Member Rivera for her active participation in discussions surrounding the planning of these new locations.

- **Audit.** Late last year, the Department of Finance conducted an exit conference to discuss the results of the recent audit of the Agricultural Labor Relations Board, conducted by the Department of Finance, Office of State Audits and Evaluations. The offices of the Board, General Counsel and Administration attended. We anticipate a final report soon.
- **Annual Report.** The Annual Report for Fiscal Year 2013-2014 is being readied for publication, which is anticipated by the end of this month or the first part of February. The Chairman thanked all the staff who worked on this report, but especially Analyst Sharon Massie and Counselor Paul Starkey (who is filling in as Acting Executive Secretary) who worked very hard to bring all the parts together.
- **ALRB 40th Anniversary Conference.** Chairman Gould was very pleased to announce that the ALRB will commemorate the 40th anniversary of the passage of the Agricultural Labor Relations Act with a day-long academic conference on Friday, April 17, 2015. It will be held at the U.C. Davis law school, facilitated by Dr. Philip Martin, Ph.D. Professor Martin teaches in the Agricultural and Resource Economics Department at UCD, is the Editor of the Migration News and Rural Migration News through UCD, and is Chair of the UC Comparative Immigration & Integration Program housed at UCD. Speaker invitations have been sent and arrangements are underway. The audience for the symposium would be students, academics, practitioners seeking MLE credit, interested parties, and ALRB staff and alumni. The Chairman also noted this year is the 80th anniversary of National Labor Relations Board which will be celebrated in Atlanta, Georgia.
- **New Arrival.** Chairman Gould congratulated Chief of Administration Nickolas Saldivar and his wife, Tennille, on the birth of their son, Nickolas Joaquin, yesterday.

#### 4. Executive Officer Report

##### ELECTION REPORT

##### NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO)

No new NAs or NOs have been filed during this reporting period.

## **PENDING ELECTION MATTERS**

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

On October 25, 2013, Sylvia Lopez (Petitioner) filed a petition to decertify the United Farm Workers of America (UFW) as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. (Employer). An election was held on November 5, 2013, and the ballots were impounded. On December 19, 2013, the Board issued its decision directing an investigative hearing on UFW Objection Nos. 1 and 2, that are to be consolidated with ULP complaint 2013-CE-039-VIS should a complaint issue.

A hearing on the consolidated election objection and unfair labor practice amended consolidated complaint commenced on September 29, 2014, and is in now in its 17<sup>th</sup> week of hearing.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

#### **Rincon Pacific, LLC, 2014-CE-024-SAL, 2014-CE-025-SAL**

On November 20, 2014, the Regional Director for the Salinas Regional Office issued a Consolidated Complaint, alleging unlawful discharge of employees, including a work crew for alleged concerted protected activity of complaints about working conditions.

#### **Bud Antle, Inc., dba Bud of California and Dole Fresh Vegetables, Inc., 2012-CE-056-SAL, 2013-CE-001-SAL**

On December 9, 2014, the Regional Director for the Salinas Regional Office issued a Consolidated Complaint, alleging Dole/Bud Antle unlawfully refused to bargain with the charging party union, Teamsters Union Local No. 890. The complaint further alleges refusal to provide information, unilateral change, interference, and unlawful diversion of bargaining unit work.

#### **Ramos Farms, 2014-CE-011-SAL**

On December 22, 2014, the Regional Director for the Salinas Regional Office issued a complaint against Ramos Farms. The complaint alleges that respondent unlawfully terminated charging party for engaging in protected activity, i.e., complaining on behalf of workers about working conditions.

## **COMPLAINTS WITHDRAWN**

### **HERBCO International, Inc., 2014-CE-001-VIS**

On January 14, 2015, the General Counsel withdrew the First Amended Complaint. Hearing for January 27, 2015, was taken off calendar

## **HEARINGS IN PROGRESS**

### **Gerawan Farming, Inc., 2013-RD-003-VIS (17-20 weeks)**

The hearing commenced on September 29, 2014 and is still in progress.

## **HEARINGS SCHEDULED**

### **Ace Tomato Company, Inc., 93-CE-37-VIS (26-30 days)**

A mandatory settlement conference occurred on November 24, 2014. The hearing scheduled for December 15, 2014, was continued and commenced January 20, 2015, and continues from day to day.

## **HEARINGS HELD**

### **Arnaudo Brothers, 2012-CE-028-VIS**

The hearing was held October 14 and 15, 2014. Decision issued December 22, 2014. Parties have until February 9, 2015, to file exceptions.

### **Arnaudo Brothers, LP and Arnaudo Brothers, Inc., 2012-CE-030-VIS**

The matter was remanded to the ALJ for issuance of a supplemental decision on the question of whether a disclaimer of interest occurred. A hearing was held on October 14, 2014, and then continued until such time as a necessary witness is available to testify.

## **CASES SETTLED AT HEARING**

None.

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

None.

## **ALJ/IHE DECISIONS ISSUED**

None.

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

### **Arnaudo Brothers, 2013-CE-028-VIS**

Decision issued December 22, 2014. Exceptions and post-hearing briefs are due February 9, 2015.

### **California Artichoke and Vegetable Growers Corp. dba Ocean Mist Farms, 2012-CE-044-VIS**

The hearing commenced on September 23, 2014 and ended on September 24, 2014. The post-hearing briefs were filed October 30, 2014. The ALJ issued Decision on December 1, 2014. Per approved stipulation, exceptions are due January 23, 2015, and replies are due February 13.

## **CASES PENDING BOARD DECISION OR ACTION:**

None.

## **CASES REFERRED TO COMPLIANCE**

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

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

## **COMPLIANCE CASES CLOSED:**

None.

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

The Board has issued 2 board decisions and 7 administrative orders since its last meeting.

## **BOARD DECISIONS**

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

On November 13, 2014, the Board issued its decision in Gurinder S. Sandhu dba Sandhu Poultry and Farming, 2012-CE-010-VIS. 40 ALRB No. 12. No petition for writ of review filed. Matter sent to compliance.

### **San Joaquin Tomato Growers, Inc., 2011-MMC-001**

On January 13, 2015, the Board issued its decision in San Joaquin Tomato Growers, Inc., 2011-MMC-001, 41 ALRB No. 1.

## **ADMINISTRATIVE ORDERS**

The administrative orders are 2014-41 through 2014-47, available on the ALRB website.

**2014-41 Ace Tomato Company, Inc., et al., 93-CE-37-VI, et al.**

Order Responding to 10/8/14 UFW Objection to Settlement Conference; General Counsel's 11/3/14 Request for Ruling on Said Objection; Ace Tomato's 11/5/14 and 11/7/14 Requests for Clarification; General Counsel's 11/10/14 Motion for Reconsideration; and Ace Tomato's 11/10/14 Motion to Strike 11/18/14

**2014-42 Ace Tomato Company, Inc., et al., 93-CE-37-VI, et al.**

Order Denying General Counsel's Request for Hearing Date 11/18/14

**2014-43 Ace Tomato Company, Inc., et al., 93-CE-37-VI, et al.**

Order Responding to Regional Director's Notice of Representation 11/21/14

**2014-44 Ace Tomato Company, Inc., et al., 93-CE-37-VI**

Order Denying Regional Director's and UFW's Applications for Special Permission to Appeal Rulings of the Executive Secretary; Order Remitting Notice of Withdrawal of Fifth Makewhole Specification to the ALJ 12/12/14

**2014-45 Gerawan Farming, Inc., 2013-RD-003-VIS, et al.**

Order Denying Without Prejudice General Counsel's Request to Seek Court Order Requiring Compliance with Subpoena Duces Tecum 12/16/14

**2014-46 Gerawan Farming, Inc., 2013-RD-003-VIS, et al.**

Order Denying Without Prejudice General Counsel's Request to Seek Court Order Requiring Compliance with Notice in Lieu of Subpoena Duces Tecum 12/17/14

**2014-47 Gerawan Farming, Inc., 2013-RD-003-VIS, et al.**

Order Authorizing General Counsel to Seek Court Order Requiring Compliance with Notice in Lieu of Subpoena Duces Tecum 12/23/14

## **REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:**

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

On June 2, 2014, the Board issued an order concerning the parties' petitions for review of the Mediator's final report. The Board found that Arnaudo's petition did not establish a prima facie case that the report was based on clearly erroneous finding of fact or was arbitrary or capricious. However, the Board did find that the UFW's

petition established a prima facie case and granted review with respect to two articles of the MMC Contract.

The Board remanded the matter to the mediator for further mediation proceedings and the issuance of a second report. On September 15, 2014, the mediator filed his supplemental report and both the Employer and the Union filed petitions for review of that report. On October 3, 2014, the Board remanded this matter to the Mediator for further proceedings and issuance of a second report pursuant to Labor Code section 1164.3, subdivision (c). 40 ALRB No. 9.

The parties are discussing proposed dates to discuss the matters raised by the Board's October 3, 2014 decision.

See court litigation for court case also involving this case.

## **ALRB BOARD LITIGATION**

### **Federal Appeals Court**

► ***Lopez v. Shiroma, et al.*, United States Court of Appeals, Ninth Circuit, Case No. 14-16640**

**United States District Court, E.D. Cal., Case No. 1:14-CV-00236-LJO-GSA**

**Assigned Counsel:** Deputy Attorney General Aaron Jones; Special Board Counsel Paul M. Starkey

**Other Counsel:** Paul Bauer (Silvia Lopez, employee)

**Filing Date:** August 22, 2014

**Summary:** Board's appeal from district court ruling on ALRB's motion to dismiss that denied ALRB's immunity defenses in a 42 USC § 1983 action for alleged civil rights violations arising out of representation election.

**Description:** Action below filed February 20, 2014, by Gerawan employee, Silvia Lopez, seeking an order to have the Board tally and disclose the ballots in the decertification election involving Gerawan Farming Inc. and the United Farm Workers of America (UFW) (ALRB Case No. 2013-RD-003-VIS). The action names, as individuals, Board Members Genevieve Shiroma and Cathryn Rivera Hernandez, Executive Secretary J. Antonio Barbosa, and Regional Director Silas Shawver.

**Status and Last Action Date:** Notice of appeal filed August 22, 2014. By order dated October 3, 2014, the case was not sent to mediation. Opening brief of the Board defendants was filed on December 31, 2014; Ms. Lopez's opposition brief is due on January 30, 2015.

## Federal District Court

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

**On Appeal:** *Lopez v. Shiroma, et al.*, United States Court of Appeals, Ninth Circuit, Case No. 14-16640 **Assigned Counsel:** Deputy Attorney General Aaron Jones; Special Board Counsel Paul M. Starkey

**Other Counsel:** Paul Bauer (Silvia Lopez, employee)

**Filing Date:** February 20, 2014

**Summary:** 42 USC § 1983 action for alleged civil rights violations arising out of representation election.

**Description:** Action filed February 20, 2014, by Gerawan employee, Silvia Lopez, seeking an order to have the Board tally and disclose the ballots in the decertification election involving Gerawan Farming Inc. and the United Farm Workers of America (UFW) (ALRB Case No. 2013-RD-003-VIS). The action names, as individuals, Board Members Genevieve Shiroma and Cathryn Rivera Hernandez, Executive Secretary J. Antonio Barbosa, and Regional Director Silas Shawver.

**Status and Last Action Date:** Upon stipulation and order for extension of time, a motion to dismiss was filed on April 21, 2014, on behalf of the named defendants. Hearing on the motion was continued by stipulation from May 19, 2014, to June 16, 2014. After initial briefing, the court ordered the matter submitted, without hearing. On July 24, 2014, the court issued its ruling granting the demurrer in part, but allowing the matter to proceed on claims of interference with First Amendment right of association. On August 8, 2014, upon stipulation of the parties, the court vacated the case conference and other deadlines and granted a stay of proceedings. On August 19, 2014, plaintiff filed a motion to appoint a special master to take and count the impounded ballots. The ALRB defendants filed a Notice of Appeal on August 22, 2014 on jurisdictional grounds (immunity defenses). In response to plaintiff's intention to engage in discovery, the Board defendants filed a motion to stay proceedings on August 26, 2014. By order dated September 23, 2014, the court granted the ALRB's motion to enforce stay of proceedings pending the appeal and denied plaintiff's motion to appoint a special expert master.

## California Appellate Courts

### Fifth District Court of Appeal

► ***Ace Tomato Company, Inc.*, Fifth District Court of Appeal No. [F065589](#)  
38 ALRB No. 6 (2013)**



**Assigned Counsel:** Scott Inciardi, Senior Board Counsel

**Other Counsel:** Robert K. Carroll, Nixon & Peabody (employer); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** August 24, 2012

**Summary:** Petitioner Employer seeks review and stay of Board's decision affirming the mediator's report fixing the terms of a collective bargaining agreement between the employer and the union.

**Description:** On August 24, 2012, Ace Tomato Company (Ace) filed a petition for writ of review in the 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 opposed 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 place the case in abeyance pending settlement attempts.

ALJ Thomas Sobel is serving as settlement judge. A settlement conference was held on January 14, 2014, and settlement efforts continue to date. The Board requested the Executive Secretary to inquire about the status of settlement discussions. The parties provided status letters to the Acting Executive Secretary, which were submitted to the Board.

On May 14, 2014, the court inquired about the status of the case. The Board reviewed the matter and on May 29, 2014, requested that the court take the case out of abeyance.

**Status and Last Action Date:** On January 7, 2015, the appellate court requested a status update, which the Office of the Executive Secretary provided to the court on January 20, 2015. The Board restated its request for the court to take the matter out of abeyance.

► *San Joaquin Tomato Growers, Inc. v. ALRB, Fifth District Court of Appeal, Case No. [F068406](#)*

**39 ALRB No. 15 (2013)**

**Assigned Counsel:** Laura Heyck, Senior Board Counsel

**Other Counsel:** Spencer Hipp, Littler (employer); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** November 22, 2013

**Summary:** Writ of Review of Board's decision and order in 39 ALRB No. 15.

**Description:** On November 22, 2013, San Joaquin Tomato Growers filed a petition for writ of review of the Board's decision in 39 ALRB No. 15 with the Fifth District Court of Appeal. On January 7, 2014, the Board filed the certified record with the court. On January 24, 2014, SJTG filed a request for extension of time to file its opening brief, which the court granted. The Employer's opening brief was filed on April 11, 2014. On August 7, 2014, the Court granted Employer's request to file brief in excess of 50 pages.

**Status and Last Action Date:** The Board and the UFW filed opposition briefs on June 30, 2014. The Employer's reply brief was filed on August 25, 2014. The matter is fully briefed and pending court decision.

► *Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. [F068526](#)*

**39 ALRB No. 17 (2013)**

**Assigned Counsel:** Benjamin Glickman, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

**Other Counsel:** Ronald H. Barsamian (Barsamian Saqui and Moody) (Employer); C. Russell Georgeson, Georgeson, Belardinelli & Noyes (Employer); David Schwarz, Irell & Manella (Employer); Mario Martinez, Marcos Camacho Law Firm (union); Scott Alan Kronland, Altshuler Berzon (union); Luke A. Wake, (NFIB Small Business Legal Center, amicus); Anthony Caso (Western Growers Assn., amicus); Anthony P. Raimondo (Silvia Lopez, amica).

**Filing Date:** December 16, 2013

**Summary:** Various constitutional challenges to Board's Decision in 39 ALRB No. 17, where the Board approved an MMC contract between the Employer and the Union.

**Description:** On December 16, 2013, Gerawan filed in the Fifth District Court of Appeal a petition for writ of review and stay of the Board's decision in 39 ALRB No. 17, in which the Board approved a collective bargaining agreement reached through the Mandatory Mediation and Conciliation process. 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. After briefing by the parties, the court on May 1, 2014, granted requests for briefing by amici (NFIB Small Business Association, Western Growers Association, and Silvia Lopez). The UFW and the Board filed separate response to amici briefs on May 27 and May, 28, 2014, respectively.

**Status and Last Action Date:** As of May 28, 2014, the matter was briefed, and pending court decision. On September 23, 2014, the court sua sponte asked the parties to report about mediation and settlement, to which the parties replied by separate letters. On November 3, 2014, the court asked for briefing by December 7 on three questions relating to the impact of the ongoing administrative hearing relating to the Gerawan election dispute and the impounding of ballots. The Board filed its letter brief on November 26, 2014. Gerawan and the UFW filed separate letter briefs on December 1, 2014. With leave of court, Silvia Lopez filed a letter brief on December 5, 2014. The matter is fully briefed.

► ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. [F068676](#)***

**Fresno Superior Court Case No. 13CECG01408**

**Assigned Counsel:** Benjamin Glickman, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

**Other Counsel:** C. Russell Georgeson, Georgeson , Belardinelli & Noyes (Employer); David Schwarz, Michael A. Behrens, Irell & Manela (Employer) Mario Martinez, Marcos Camacho Law Firm (union).

**Filing Date:** January 15, 2014

**Summary:** Appeal from Fresno County Superior Court ruling denying petition for writ of mandate challenging the MMC process for lack of jurisdiction.

**Description:** 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, which the court denied for lack of jurisdiction. On January 27, 2014, Gerawan requested consolidation of cases. 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. The record on appeal was filed on April 10, 2014

**Status and Last Action Date:** The Employer filed its opening brief on June 13, 2014. The Board filed its brief on August 7, 2014. The UFW brief was filed on August 19, 2014. The Employer's reply brief was filed on September 9, 2014. On September 23, 2014, the court *sua sponte* asked the parties to report about mediation and settlement, to which the parties replied by separate letters. As of October 13, 2014, the matter is fully briefed and pending decision.

► ***Perez Packing, Inc., Fifth District Court of Appeal No. [F068697](#)***  
**39 ALRB No. 19 (2013)**

**Assigned Counsel:** Raj Dixit, Senior Board Counsel

**Other Counsel:** Ronald Barsamian, Barsamian & Moody (employer), Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** January 17, 2014

**Summary:** Writ of Review of Board's decision and order in 39 ALRB No. 19.

**Description:** On January 17, 2014, Perez Packing, Inc. filed a petition for writ of review of the Board's decision in 39 ALRB No. 19, in which the Board found the Employer engaged in bad faith bargaining by failing to provide information to the union. The certified record was filed with the court on February 3, 2014.

**Status and Last Action Date:** The matter was fully briefed on May 6, 2014. On May 8, the Court of Appeal issued a writ of review and a corrected writ on May 12, 2014. On September 24, 2014, the court notified the parties of the right to request oral argument. Upon separate requests of the parties for oral argument, the court had set hearing for November 5, 2014, in Fresno, which was continued on the court's own motion to January 27, 2015. On December 19, 2014, the court on its own motion took the hearing off calendar. As of January 22, 2015, the case has not been re-scheduled.

► ***Tri-Fanucchi Farms, Fifth District Court of Appeal No. [F069419](#)***  
**40 ALRB No. 4 (2014)**

**Assigned Counsel:** Scott Inciardi, Senior Board Counsel

**Other Counsel:** Howard Sagaser (employer), Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** May 23, 2014

**Summary:** Writ of Review of Board's decision and order in 40 ALRB No. 4.

**Description:** On May 23, 2014, Tri-Fanucchi Farms filed a petition for writ of review of the Board's decision in 40 ALRB No. 4, in which the Board upheld the ALJ decision finding a refusal to bargain. The Employer challenges the union's status as certified exclusive representative. The certified record was filed with the court on June 12, 2014. Employer filed its opening brief on June 25, 2014. The Board requested an extension of time to file its brief, which was opposed by the Employer, and denied by the court on July 25, 2014. On July 25, 2014, the court also requested letter briefing by August 13, 2014, on whether the case should be expedited. The Employer filed its letter brief on July 30, 2014. The Board's letter brief on expediting the case was filed on August 13, 2014. (As of September 30, 2014, the UFW had not filed its letter brief.) On July 18, 2014, Employer filed a motion to augment record, which the ALRB and the UFW separately opposed on August 4, 2014, and which the court denied on August 6, 2014. On July 22, 2014, the ALRB renewed its request to extend time to file opening brief, which the Employer opposed. The court granted the Board's request to extend the time of filing to 15 days after resolution of Petitioner's motion to augment the record.

**Status and Last Action Date:** The UFW filed its brief on July 30, 2014. The Board's brief and request for judicial notice of matters was filed on August 21, 2014. The Employer's reply brief was filed on September 15, 2014. On October 30, 2014, the court denied the request for expedited treatment. On November 3, 2014, the Court deferred ruling on the Board's request for judicial notice pending consideration of the petition on the merits. The case is pending court action.

► ***Gerawan Farming, Inc. v. ALRB, et al., Fifth District Court of Appeal No. [F069896](#)***

**Fresno County Superior Court Case No 13-CECG-03374**

**Assigned Counsel:** Deputy Attorney General Nelson Richards; Paul M. Starkey, Special Board Counsel

**Other Counsel:** David Schwarz, Irell & Manela (Employer); Paul Bauer, Walter & Wilhelm Law Group (intervenor)

**Filing Date:** August 15, 2014

**Summary:** Writ of mandate (First Amendment challenge to MMC; public participation issue).

**Description:** On July 16, 2014, Gerawan filed its notice of appeal.

**Status and Last Action Date:** Appeal in preliminary stages. Appellant is proceeding by clerk's and reporter's transcripts. On August 27, 2014, after responses from the parties, the court ruled the matter is not appropriate for mediation. On September 9, 2014, the court requested preparation of the record by court reporter's transcript. By stipulation of the parties, Appellant's opening brief, due December 15, 2014, is now due January 20, 2015. As of January 22, 2015, appellant's opening brief is not received.

► ***P & M Vanderpoel Dairy v. ALRB, et al., Fifth District Court of Appeal No. [F070149](#)***

**40 ALRB No. 8**

**Assigned Counsel:** Laura Heyck, Senior Board Counsel

**Other Counsel:** Howard Sagaser, Sagaser, Watkins & Wieland PC (Employer); Sylvia Torres Guillen, ALRB General Counsel; Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** September 26, 2014

**Summary:** Petition for writ of review of Board's decision finding employer wrongfully fired dairy workers for protected concerted activity (requesting pay raise).

**Description:** On September 26, 2014, P & M Vanderpoel Dairy filed its petition for review of 40 ALRB No. 8.

**Status and Last Action Date:** Record on appeal was filed October 3, 2014. The Petitioner filed its opening brief on December 23, 2014. The Board's brief is due January 27, 2015. The Petitioner's Reply Brief is due on February 28, 2015.

► ***Lupe Garcia v. California Agricultural Labor Rel. Bd., et al., Fifth District Court of Appeal No. [F070287](#)***

**Fresno County Superior Court Case No. 13-CECG-03374**

**39 ALRB No. 5 (2013-MMC-003)**

**Assigned Counsel:** Deputy Attorney General Nelson Richards; Paul M. Starkey, Special Board Counsel

**Other Counsel:** Paul Bauer, Walter & Wilhelm Law Group (Petitioner); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** October 20, 2014

**Summary:** Appeal of Denial of Petition for Writ of Mandate challenging the Board's April 16, 2013 order in 2013-MMC-003 (39 ALRB No. 5) (constitutionality of MMC) (Gerawan employees challenge).

**Description:** On October 20, 2014, Lupe Garcia, an individual worker employed by Gerawan, filed an appeal of the trial court's denial of his petition and complaint.

**Status and Last Action Date:** Case found not suitable for mediation. The record on appeal was filed on January 7, 2015. Appellant's opening brief is due on February 17, 2015.

### **Sixth District Court of Appeal**

► ***United Farm Workers (Corralitos Farms, LLC), Sixth District Court of Appeal***  
Case No. [H041113](#)

**40 ALRB No. 6**

**Assigned Counsel:** Raj Dixit, Senior Board Counsel

**Other Counsel:** Ana Cristina Toledo, Noland, Hamerly, Etienne & Hoss (employer), Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** June 18, 2014

**Summary:** Petition for writ of review of Board's decision finding union unlawfully picketed for representative status.

**Description:** On June 18, 2014, petitioner United Farm Workers of America (UFW or Union) filed its petition for review.

**Status and Last Action Date:** The Board filed the administrative record on July 28, 2014. The UFW's opening brief due date was extended by stipulation from September 2, 2014, to October 2, 2014. The UFW then obtained another extension, and filed its opening brief on November 14, 2014. After two 30-day extensions requested by the Employer, briefs for the Board and Employer are due February 17, 2015.

► ***Kawahara Nurseries, Inc., Sixth District Court of Appeal*** Case No. [H041686](#)  
**40 ALRB No. 11**

**Assigned Counsel:** Scott P. Inciardi, Senior Board Counsel

**Other Counsel:** Patrick S. Moody, Barsamian & Moody (Employer)

**Filing Date:** November 26, 2014

**Summary:** Petition for writ of review of Board's decision finding that employer unlawfully laid off employees based on their union activity and refused to rehire workers based on their union activity and for having given testimony in an ALRB proceeding.

**Description:** On November 26, 2014, petitioner Kawahara Nurseries, Inc. filed its petition for review of the Board's decision in 40 ALRB No. 11.

**Status and Last Action Date:** The certified record was filed on December 16, 2014. Petitioner's opening brief was filed on January 20, 2015. The Board's opening brief is due February 24, 2015.

### California Superior Courts

► **Francisco Acheron v. ALRB, et al. (3<sup>rd</sup> DCA)**

**Sacramento County Superior Court Case No. 34-2014-00168939**

**Assigned Counsel:** Andrea Austin, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

**Other Counsel:** Paul A. Greenberg, Greenberg & Weinmann

**Filing Date:** September 15, 2014

**Summary:** Francisco Acheron, a current ALRB employee with the Office of the General Counsel has filed a Complaint for Discrimination and Harassment arising out employment.

**Description:** The action is against the ALRB, as a government agency, and named individual defendants for alleged harassment and retaliation arising from employment.

**Status and Last Action Date:** Plaintiff's counsel voluntarily filed an amended complaint on December 16, 2014. Defendants' answer was filed on January 15, 2015.

### Fresno County Superior Court (5<sup>th</sup> DCA)

► ***Gerawan Farming, Inc. v. California Agricultural Labor Rel. Bd., et. al.,***

**Fresno County Superior Court Case No. 13-CECG-01408**

**On Appeal:** Fifth District Court of Appeal No. [F08676](#)

**Assigned Counsel:** Benjamin Glickman, Deputy Attorney General; Paul M. Starkey, Special Board Counsel

**Other Counsel:** David Schwarz, Irell & Manella, LLP (employer); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** May 13, 2013



**Summary:** Action challenges the Board’s April 16, 2013 order for mandatory mediation and conciliation.

**Description:** The action filed by Gerawan Farming, Inc. (Gerawan) claims 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.

On May 17, 2013, Gerawan Farming filed an ex parte application to stay the Board’s April 16, 2013 order directing the employer to engage in MMC with the union. On May 20, 2013, Tri-Fanucchi Farms filed a request to appear as amicus curiae on behalf of the petitioner. On May 24, 2013, the Board opposed both the request for stay and Tri-Fanucchi Farm’s request to appear as amicus curiae. On May 24, 2013, the UFW also filed its opposition to Gerawan’s Farming’s request for stay. After hearing on June 10, 2013, the court denied the request for stay on June 19, 2013.

On June 18, 2013, the Board filed the certified record with the court. 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.

**Status and Last Action Date:** The superior court denied the writ on September 26, 2013. Petitioner appealed. (See above.)

► *Lupe Garcia v. California Agricultural Labor Rel. Bd., et al.*,  
Fresno County Superior Court Case No. 13-CECG-01557  
39 ALRB No. 5 (2013-MMC-003)

**Assigned Counsel:** Deputy Attorney General Benjamin Glickman; Paul M. Starkey, Special Board Counsel

**Other Counsel:** Paul Bauer, Walter & Wilhelm Law Group (Petitioner); Mario Martinez, Marcos Camacho Law Firm (union)

**Filing Date:** May 17, 2013

**Summary:** Petition for Writ of Mandate challenging the Board’s April 16, 2013 order in 2013-MMC-003 (39 ALRB No. 5) (constitutionality of MMC) (Gerawan employees challenge).

**Description:** 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.

**Status and Last Action Date:** Board's counsel filed papers to stay all proceedings, including discovery, which the court granted on September 24, 2014, and dates for pretrial conferences and trial in November 2014 have been vacated.

► *Gerawan Farming, Inc. v. ALRB, et al.*,

**On Appeal:** Fifth District Court of Appeal Case No. F069896

**Fresno County Superior Court Case No 13-CECG-03374**

**Assigned Counsel:** Deputy Attorney General Nelson Richards; Paul M. Starkey, Special Board Counsel

**Other Counsel:** David Schwarz, Irell & Manela (Employer); Paul Bauer, Walter & Wilhelm Law Group (intervenor)

**Filing Date:** October 28, 2013

**Summary:** Writ of mandate (First Amendment challenge to MMC; public participation issue).

**Description:** 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 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.

On December 20, 2013, Lupe Garcia filed a motion to intervene in the case, alleging that his individual rights had been denied. The court granted the motion and the Board filed its opposition to the motion to intervene on January 8, 2014. On June 2, 2014, the court in a tentative decision granted the demurrer without leave to amend and the motion to strike, separately finding that the complaint was untimely (Lab. Code, § 1164.5), the court lacked jurisdiction to hear the matter (Lab. Code, § 1164.9), and the Board has immunity from liability for the 42 U.S.C. section 1983 action. On the motion to strike, the court ruled certain allegations impermissibly

expanded the complaint. After hearing, on June 3, 2014, the court took the matter under submission.

**Status and Last Action Date:** On May 15, 2014, the court granted the Board's demurrer to Gerawan's lawsuit, without leave to amend, for lack of jurisdiction and immunity from suit. By minute order of July 7, 2014, the court affirmed the dismissal of the motion to intervene, which was entered as a judgment on July 25, 2014. On July 16, 2014, Gerawan filed its notice of appeal. On September 19, 2014, Lopez filed a separate appeal. (See above.)

Member Shiroma noted a majority of appellate cases are being handled by our Board Counsel or by the Attorney General's office. Chairman Gould expressed his surprise when he learned that the Board's counsel are called upon to perform two quite different functions, to advise the Board and to defend the Board's decisions. This presents a challenge to counsel not only regarding workload, but also switching roles to perform specific functions.

## **5. GENERAL COUNSEL'S REPORT:**

- a. Unfair Labor Practice Activities Report – No report.
- b. Outreach Activities Report – No report.

## **6. CHIEF OF ADMINISTRATION REPORT**

Chief of Administration Saldivar thanked Chairman Gould for his kind words regarding the birth of Mr. Saldivar's son, Nicholas Joaquin. Mr. Saldivar extended congratulations on the birth of Cameron James Chatterjee on November 24<sup>th</sup> to Accounting Officer Arun Chatterjee and his wife, Robin.

Mr. Saldivar reported the timely submission of the Supplementary Schedule of Operating Expenses and Equipment Report (DF 300) to Department of Finance. Mr. Saldivar thanked Vianey Garcia from LWDA for assisting on the department's budget and reviewing the report. The Administration Unit continues to maintain focus on daily activities. Work on drafting policies and procedures continues. Mr. Saldivar expressed his hope that the new and updated policies and procedures would be submitted to the Board for review within the next three months.

## **7. SPECIAL PROJECTS**

- a. **Education/Outreach** – Nothing new to report.
- b. **Annual Report** – The report is completed and being processed for publication.

## **8. REGULATIONS - Nothing new to report.**

## **9. LEGISLATION – Nothing new to report.**

## **10. PERSONNEL**

Hires and Separations: November 20, 2014 – Present:

### Hires:

Heidi Womer, Administrative Assistant to the General Counsel, November 2014

Jorge Gaitan, General Counsel Attorney (PERM), Sacramento, December 2014

Andres Garcia, General Counsel Attorney (PERM), Oxnard, December 2014

Leonardo Pescador; Field Examiner II (Reclass), Visalia, December 2014

Michael Marsh, General Counsel Attorney, January 2015

Jeremie Jenkins, UCD Law Student Extern, January 2015

### Separations:

Servando Medina, Legal Secretary, Salinas, November 2014

Paula Johnson, Executive Secretary, Sacramento, December 2014

Vivian Velasco Paz, General Counsel Attorney, Visalia, December 2014

Cristina Peña, Assistant General Counsel, Sacramento, January 2015

## **11. ANNOUNCEMENTS**

The public meeting adjourned at 10:08 a.m.