

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES WORKING MINUTES

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

December 3, 2015

Time: 10:03 a.m.
Members Present: Chairman Gould, Members Shiroma and Rivera-Hernandez
Staff Present: Executive Secretary Barbosa; Special Counsel Starkey; Board Counsel Heyck; Special Legal Advisor Blanco; Administrative Law Judge Sobel; Analysts Cooper and Massie; Student Assistant Mendoza
Others Present: ALRB: Chief of Administration Saldivar; General Counsel Woo-Sam; LWDA: Garin Casaleggio, April Klein; Tyler Blackney, Director of Government Relations, California Association of Winegrape Growers; Mark Martinez, Vice President Public Policy, California Strawberry Commission; Barry Bedwell, President, California Fresh Fruit Association; Ronald Barsamian, Esq., Barsamian & Moody; Bryan Little, Director Labor Affairs, California Farm Bureau Federation; Michael Young, Legislative Advocate, California Labor Federation; Carl Borden, Associate Counsel, California Farm Bureau Federation

OPEN SESSION

- 1. Approval of Minutes:** Board approved 3-0 the minutes of June 15, 2015.
- 2. Public Comment:** None at this time.
- 3. Chairman's Report:**
 - On June 24th of this year, the Board commemorated its 40th anniversary at the Stanford mansion in Sacramento. Governor Brown joined us and spoke. Governor Brown continues to closely watch this statute.

- Subsequent to June 24th, Chairman Gould created an ad hoc committee where he invited representatives of both the labor and management communities to advise the Board. On August 3, the committee discussed the proposed rule on worker education coming before the Board, and subsequently the Board held hearings in Fresno, Salinas and Santa Maria. Chairman Gould apologized to members of the Ad Hoc committee who were not notified of the public Board meeting.
- On November 16, 2015, copies of the proposed regulatory language regarding e-filing were circulated to ALRB staff for review to provide any comment and or feedback by December 7th. Once those documents are finalized, they will be submitted to the Office of Administrative Law and the notice and comment period will commence.
- On October 9, 2015, Governor Brown vetoed AB 561 which would have required an employer who seeks appellate review of any Board order to post a bond for the entire economic value of the Board's order and obliged the Board to resolve the case within one year of any compliance decision. In response to the Governor's veto message, Chairman Gould convened a committee with the General Counsel to discuss devising rules to expedite internal processes as well as a wide variety of other matters.

Chairman Gould introduced the proposed rule regarding access for worker education, and described the consensus from the Board hearings held this summer that worker education about the ALRA is needed. In his remarks, the Chairman referred to the findings from the public hearings held in Fresno, Salinas, and Santa Maria between September 9, 2015, and September 15, 2015. The hearings were held for the purpose of gathering information on whether the Board needed to take additional steps to ensure that farmworkers were aware of their rights and protections under the Agricultural Labor Relations Act (ALRA) with respect to protected concerted activity and what regulatory steps, if any, could or should be taken by the Board to increase that awareness.

Chairman Gould noted that meaningful access to education about the ALRA is restricted or non-existent due to the nature of the California agricultural workers' experience. Mr. Gould summarized staff's November 23, 2015 memo which was generated after the hearings and emphasized that employer supervisors would be present during the provision of education in non-working time.

Chairman Gould invited members of the public attending the Board meeting to comment.

Barry Bedwell, President of the California Fresh Fruit Association stated that his organization supported the general idea of worker education; however, he felt that the Board's proposal is overly dramatic. He proposed a process that would be cooperatively managed by employers and ALRB staff wherein employees could be notified about educational opportunities that would take place somewhere other than the employer's property. Mr. Bedwell stated that he thinks that there would naturally be a level of fear and distrust about the intent behind education efforts if such activity were to take place as the Board is currently proposing. This would be due to the perception by many agricultural employers that the ALRB and organized labor are connected. Mr. Bedwell suggested that it was premature for the Board to conclude that workplace access was the best vehicle for worker education, and expressed his hope that the Board would take a step back and postpone taking the proposed regulatory action.

Bryan Little of the California Farm Bureau Federation stated that he was not prepared to offer substantive comments, but that the November 23, 2015 memo had raised many questions for him. He would like more time to analyze the issues during the regulatory process.

Michael Young of the California Labor Federation expressed his organization's support for the Board's proposal as educating workers about their rights is of critical importance. He also commended the Board for taking steps to overcome language barriers.

Carl Borden of the California Farm Bureau Federation expressed his organization's significant concern about the proposed location of worker education being on employer property. Mr. Borden expressed his opinion that the access allowed by section 1151(a) of the ALRA was too narrow to allow for access for the purposes of worker education, and that organizational access afforded by the Board's regulations had an entirely different legal basis. He also proposed that if two or more workers at a workplace have enough information to file a request for worker education with an ALRB Regional Office, it follows that they already know where to obtain information about their rights. Alternatively, the ALRB could contact an employer and try to arrange for a voluntary education meeting. Mr. Borden urged the Board to withdraw the current proposal.

With respect to Mr. Borden's observation that workers who seek education about their rights under the regulation must be presumed not to need it by virtue of their having filed the requisite notice, Chairman Gould noted that there is as great a difference between being generally aware that there is an Agricultural Labor Relations Act and knowing what its features and processes are as there is between knowing that one can learn law by going to law school and knowing what the law is.

ALRB Administrative Law Judge Thomas Sobel responded to some of the comments made at the meeting. He pointed out that the Court of Appeal in the *San Diego Nursery* case held that the Board did have the authority to enter private property for the purpose of educating employees about their rights under the Act upon the filing of a notice of intention to organize by a labor organization. This authority stemmed from the Board's authority to control the election investigation process. Since Board experience shows that labor organizations do not always or inevitably follow notices of intention to take access with election petitions, the Board could reasonably conclude that employees seeking education about their rights under the proposed regulation may also be considered to be engaged in a process of self-organization that might lead to an election.

The Board voted 3-0 directing staff to move forward with the formal rulemaking process for the education access regulation.

Board recessed briefly at 11:20 a.m. and resumed the meeting at 11:45 a.m.

4. Executive Officer Report

ELECTION REPORT

Since the Board's last meeting, there have been sixty-two (62) new notices of intent to take access (NAs) and three (3) notices of intent to organize (NOs) that have been filed with our regional offices. Of the 62 NAs filed, only 6 are still active. None of the NA or NO filings that have been filed have led to the filing of an election petition. The filings are listed below.

NOTICE OF INTENT TO TAKE ACCESS (NA)

06/24/15	Larse Farms, Inc.	UFW	2015-NA-001-SAL
06/24/15	Rocha Brothers Farms	UFW	2015-NA-002-SAL
06/25/15	Rogina, Inc.	UFW	2015-NA-001-VIS
06/25/15	Live Oak Farms	UFW	2015-NA-002-VIS
06/26/15	Ortega Berry Farms	UFW	2015-NA-003-SAL
06/26/15	Garroutte Farms	UFW	2015-NA-004-SAL
06/26/15	Corralitos Farms	UFW	2015-NA-005-SAL
06/26/15	Dutra Farms	UFW	2015-NA-006-SAL
06/29/15	Sweetwoods Farm	UFW	2015-NA-003-VIS
06/30/15	Mike Jensen Farms	UFW	2015-NA-004-VIS
06/30/15	Dimare Fresh	UFW	2015-NA-005-VIS
06/30/15	Family Ranch	UFW	2015-NA-006-VIS
07/07/15	Valley Garlic Inc.	UFW	2015-NA-007-VIS

07/08/15	Aptos Berry Farms	UFW	2015-NA-007-SAL
07/08/15	Reiter Berry Farms	UFW	2015-NA-008-SAL
07/08/15	Fernández Bros. Inc.	UFW	2015-NA-009-SAL
07/08/15	Scurich Berry Farm	UFW	2015-NA-010-SAL
07/09/15	Fowler Packing Co.	UFW	2015-NA-008-VIS
07/09/15	Pappas & Co.	UFW	2015-NA-009-VIS
07/09/15	Stamoules Produce Co.	UFW	2015-NA-010-VIS
07/09/15	Martinelli Vineyards	UFW	2015-NA-011-VIS
07/10/15	John H. Kautz	UFW	2015-NA-012-VIS
07/10/15	Vino Farm Inc.	UFW	2015-NA-013-VIS
07/13/15	Tanimura & Antle, Inc.	UFW	2015-NA-011-SAL
07/13/15	Sonoma Cutrer Vineyards	UFW	2015-NA-014-VIS
07/16/15	Saticoy Berry Farms	UFW	2015-NA-012-SAL
07/17/15	Ito Bros., Inc.	UFW	2015-NA-013-SAL
07/21/15	Mandalay Berry Farms	UFW	2015-NA-014-SAL
07/23/15	Marz Farms, Inc.	UFW	2015-NA-015-SAL
07/23/15	Colorado Farms, LLC	UFW	2015-NA-016-SAL
07/24/15	Camarillo Berry Farms	UFW	2015-NA-017-SAL
07/27/15	Ortega Berry Farms (2nd)	UFW	2015-NA-018-SAL
07/30/15	Springfield Farms	UFW	2015-NA-019-SAL
07/30/15	Dimare Fresh (2nd)	UFW	2015-NA-015-VIS
07/31/15	Live Oak Farms	UFW	2015-NA-016-VIS
07/31/15	Stellar Distributing, Inc.	UFW	2015-NA-017-VIS
08/03/15	Logoluso Farms Inc.	UFW	2015-NA-018-VIS
08/04/15	Specialty Crop Co.	UFW	2015-NA-019-VIS
08/06/15	Harvest Moon	UFW	2015-NA-020-SAL
08/07/15	T.T. Miyasaka, Inc.	UFW	2015-NA-021-SAL
08/10/15	Desert Best Farms	UFW	2015-NA-022-SAL
08/17/15	Aptos Berry Farms	UFW	2015-NA-023-SAL
08/17/15	Providence Farms, LLC	UFW	2015-NA-024-SAL
08/17/15	Merrill Farms, LLC	UFW	2015-NA-025-SAL
08/20/15	PV Farming Ops., LLC	UFW	2015-NA-026-SAL
08/25/15	Fernandez Brothers, Inc.	UFW	2015-NA-027-SAL
08/20/15	Sunset Farming, Inc.	UFW	2015-NA-028-SAL
08/20/15	Paraiso Organics, Inc.	UFW	2015-NA-029-SAL
08/24/15	J. Marchini Farms	UFW	2015-NA-020-VIS
09/08/15	Camarillo Berry Farms	UFW	2015-NA-030-SAL
09/10/15	Rio Mesa Organics Farms	UFW	2015-NA-031-SAL
09/10/15	Royal Oaks Farms LLC	UFW	2015-NA-032-SAL
09/10/15	Sakakihara Farms	UFW	2015-NA-033-SAL
09/17/15	Elkhorn Berry Farms LLC	UFW	2015-NA-034-SAL
09/17/15	Elkhorn Berry Org. Farms	UFW	2015-NA-035-SAL
10/29/15	Cedar Point Nursery	UFW	2015-NA-036-SAL

11/09/15	Tanimura & Antle, Inc.	UFW	2015-NA-037-SAL
11/09/15	Dutra Farms	UFW	2015-NA-038-SAL
11/09/15	Harvest Moon Ag. Svcs.	UFW	2015-NA-039-SAL
11/09/15	Larse Farms, Inc.	UFW	2015-NA-040-SAL
11/09/15	T.T. Miyasaka, Inc.	UFW	2015-NA-041-SAL
11/09/15	Providence Farms, LLC	UFW	2015-NA-042-SAL

NOTICE OF INTENT TO ORGANIZE (NO)

08/10/15	The Specialty Crop Co.	UFW	2015-NO-001-VIS
08/17/15	Stellar Distributing Inc.	UFW	2015-NO-002-VIS
11/03/15	Cedar Point Nursery	UFW	2015-NO-001-SAL

PENDING ELECTION MATTERS

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

The ALJ's decision on consolidated election objection and unfair labor practice amended consolidated complaint issued September 17, 2015. Exceptions to the decision were filed November 13, 2015. Reply briefs are due December 21, 2015.

RESOLVED ELECTION MATTERS

Papagni Fruit Company, 2015-RD-001-VIS

On September 22, 2015, Daniel Morales, an agricultural worker, filed a petition to decertify the United Farm Workers of America (UFW) as the certified labor organization representing employees at Papagni Fruit Company (Papagni), located in Madera, California (2015-RD-001-VIS). The company has 150 employees, according to the petition filed in the ALRB's Visalia Regional Office. On September 21, 2015, the UFW filed at the Visalia Regional Office two separate unfair labor practice charges, alleging unfair labor practices by Papagni, including employer conduct relating to a decertification campaign. On September 25, 2015, the Regional Director dismissed the petition as (1) there was no reasonable cause to find that the Petition presents a bona fide question of representation and (2) there has not been an adequate showing of employee support pursuant to Section 20300(j), Cal, Code Regs., tit 8 § 20300(i), (j). The petitioner did not seek review of the dismissal and the matter is now fully resolved.

COMPLAINT REPORT

Since the Board's last meeting, the General Counsel has issued five (5) complaints and one (1) amended makewhole specification. The General Counsel has also settled eight (8) complaints prior to hearing.

COMPLAINTS ISSUED

Monterey Mushrooms, Inc., 2013-CE-026-SAL & 2013-CL-002-SAL

General Counsel issued a complaint on June 19, 2015.

Muranaka Farm, Inc., 2015-CE-003-SAL

General Counsel issued a complaint on June 26, 2015.

Gerawan Farming, Inc., Case Nos. 2015-CE-011-VIS and 2015-CE-012-VIS

General Counsel issued a complaint on June 30, 2015.

Sun Pacific, 2014-CE-007-VIS

General Counsel issued a complaint on June 30, 2015.

Sabor Farms, 2013-CE-047-SAL

General Counsel issued a complaint on June 30, 2015.

Ace Tomato Company, Inc., 97-CE-37-VI

General Counsel issued a seventh amended makewhole specification on November 13, 2015.

NINE COMPLAINTS HAVE SETTLED PRIOR TO HEARING

Rincon Pacific, LLC, 2014-CE-024-SAL

The General Counsel and Respondent reached an informal unilateral settlement agreement.

Santa Paula Berry Farms, LLC, 2014-CE-062-SAL

The General Counsel and Respondent reached a unilateral settlement agreement that was approved by the Regional director and the hearing was taken off calendar.

T-Y Nursery, Inc., 2014-CE-021-SAL

The General Counsel and Respondent reached an informal unilateral settlement agreement.

KC AG, LLC, 2014-CE-030-VIS

The parties reached an informal bilateral settlement agreement.

Frank Pinheiro Dairy dba Milanesio Farms, 2013-CE-013-VIS

The parties reached an informal bilateral settlement agreement.

Sun Pacific, 2014-CE-007-VIS

The parties reached an informal bilateral settlement agreement.

Muranaka Farm, Inc., 2015-CE-003-SAL

The parties reached an informal bilateral settlement agreement.

George Amaral Ranches, 2013-CE-019-SAL

The parties reached an informal bilateral settlement agreement and agreed to defer remaining charges to arbitration.

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

Parties are expected to finalize agreement by December 4, 2015.

COMPLAINTS WITHDRAWN

KC AG, LLC, 2014-CE-030-VIS

The General Counsel withdrew the complaint on October 8, 2015 as the parties reached an informal bilateral settlement agreement and the parties have complied with all the terms and conditions in the agreement.

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

There are five (5) hearings currently scheduled: two in January, one in February, one in April, and one in August 2016.

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

Pre-hearing Conference: December 21, 2015 @ 1 PM

Hearing: January 11, 2016 (14 days)

Ace Tomato Company, Inc., 2012-CE-007-VIS

Pre-hearing Conference: December 28, 2015 @ 1 PM

Hearing: January 19, 2016 (12 days)

Monterey Mushrooms, 2013-CE-026-SAL & 2015-CL-002-SAL

Pre-hearing Conference: January 26, 2016 @ 1 PM

Hearing: February 16, 2016 (11 days)

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

Pre-hearing Conference: March 21, 2016 @ 1 PM;

Hearing: April 11, 2016 (30 days)

Gerawan Farming, Inc., 2015-CE-011-VIS & 2015-CE-012-VIS

Pre-hearing Conference: July 18, 2016@ 1 PM;

Hearing: August 8, 2016 (10 days)

HEARINGS HELD

Sabor Farms, 2013-CE-047-SAL

Hearing held August 18 and 19, 2015

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

None.

TWO ALJ/IHE DECISIONS ISSUED

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

ALJ decision issued September 17, 2015.

Sabor Farms, 2013-CE-047-SAL

ALJ decision issued October 8, 2015.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

Sabor Farms, 2013-CE-047-SAL

ALJ decision issued October 8, 2015.

Exceptions filed November 30, 2015

Reply briefs due December 18, 2015

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

ALJ decision issued September 17, 2015.

Exceptions filed November 13, 2015

Reply briefs due December 21, 2015

CASES PENDING BOARD DECISION OR ACTION

Ace Tomato Company, Inc., 93-CE-037-VI

The General Counsel issued an amended makewhole specification on November 13, 2015. The answer to the specification is due within fifteen (15) days, i.e., December 3, 2015.

Gerawan Farming, Inc., 2013-RD-003-VIS
Board decision on exceptions to ALJ decision.

Sabor Farms, 2013-CE-047-SAL
Exceptions filed November 30, 2015
Reply briefs due December 18, 2015

CASES REFERRED TO COMPLIANCE

None.

COMPLIANCE CASES CLOSED

None.

THE BOARD HAS ISSUED TWO BOARD DECISIONS and SEVEN ADMINISTRATIVE ORDERS

BOARD DECISIONS

Ace Tomato Company, Inc., California Corporation, Delta Pre-Pack Co., a California Company, Kathleen Lagorio Janssen, an Individual, 93-CE-37-VI 41 ALRB No. 5
Board decision issued September 10, 2015.

Arnaudo Brothers, LP and Arnaudo Brothers, Inc., 2012-CE-030-VIS 41 ALRB No. 6
Board decision issued September 10, 2015.

ADMINISTRATIVE ORDERS

Gurinder S. Sandhu, 2012-CE-010-VIS
Order Denying Request for Authorization to Initiate Enforcement Proceedings, dated June 25, 2015
Administrative Order 2015-09

Bud Antle, Inc., 2012-CE-056-SAL
Order Denying Respondent's Application for Special Permission to Appeal the Order Granting in Part Petitions to Revoke Subpoenas Duces Tecum and Denying the Remainder; and Order Denying Petitioners to Revoke Subpoenas Ad Testificandum, dated July 16, 2015.
Administrative Order 2015-10

Associated Tagline, Inc. dba Ag Services, 2012-CE-006-SAL

Order Granting the General Counsel's Request to Seek Court Order Enforcing Subpoena Duces Tecum, dated August 20, 2015
Admin. Order 2015-11

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

Order Denying Respondent's Motion for Reconsideration and Granting General Counsel's Request for Enforcement of Subpoenas, dated September 2, 2015
Admin. Order 2015-12

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

Order Granting Approval to Seek Court Enforcement of Board Order dated September 21, 2015
Admin. Order 2015-13

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

Order Granting the General Counsel's Request to Seek Court Order Enforcing Subpoena Duces Tecum, dated October 6, 2015
Admin. Order 2015-14

George Amaral Ranches, Inc., 2013-CE-019-SAL

Order Denying Charging Party's Application for Special Permission to Appeal Administrative Law Judge Orders, dated November 17, 2015.
Admin. Order 2015-15

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW

None.

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**

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

Status and Last Action Date: The matter is fully briefed.

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

Summary: 42 United States Code section 1983 action for alleged civil rights violations arising out of representation election.

Status and Last Action Date: 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 Supreme Court

▶ *Gerawan Farming, Inc. v. ALRB*, California Supreme Court Case No. S227243

Case No. F068526 (5th DCA); 39 ALRB No. 17 (2013)

Summary: Various statutory and constitutional challenges to Board's Decision in 39 ALRB No. 17, where the Board approved an MMC contract between the Employer and the Union. On May 14, 2015, the court issued a published decision reversing the Board and finding the MMC unconstitutional and an improper delegation of statutory authority. On June 22, 2015, the Employer, the ALRB and the UFW filed separate petitions for review.

Status and Last Action Date: On August 19, 2015, the Supreme Court granted review. Briefing is in progress.

▶ *Tri-Fanucchi Farms*, Fifth District Court of Appeal, Case No. S227270
Case No. F069419; 40 ALRB No. 4 (2014)

Summary: Petition for review of published decision partially upholding writ of review of Board's decision and order in 40 ALRB No. 4. On May 14, 2015, in a published decision, the court upheld the Board's decision not allowing the Employer's abandonment defense, but set aside the Board's ruling as to the remedy, finding no liability for the Employer, reasoning that because no appellate decision had ruled on the defense raised, the Employer's assertion of the defense in this case promoted the Act.

Status and Last Action Date: The Board and the Employer filed separate petitions for review in the California Supreme Court, respectively, on June 22 and June 23,

2015. On August 19, 2015, the Supreme Court granted review. Briefing is in progress.

► ***San Joaquin Tomato Growers, Inc. v. ALRB, Supreme Court Case No. S227250, Case No. F068406 (5th DCA); 39 ALRB No. 15 (2013)***

Summary: Petition for review of unpublished decision dated May 14, 2015, upholding Board's decision and order in 39 ALRB No. 15, concerning the makewhole remedy. Employer filed a petition for review on June 22, 2015 (challenging the distribution of makewhole through the Agricultural Employee Relief Fund (AERF).

Status and Last Action Date: Briefing was completed July 17, 2015. The California Supreme Court denied review August 19, 2015. The matter is completed.

► ***P & M Vanderpoel Dairy v. ALRB, et al., Supreme Court Case No. S230401, Case No. F070149 (5th DCA) (40 ALRB No. 8)***

Summary: Petition for writ of review of Board's decision finding employer wrongfully filed dairy workers for protected concerted activity (requesting pay raise). After oral argument on September 22, 2015, on October 9, 2015, the court issued an unpublished decision upholding the Board's action.

Status and Last Action Date: On November 19, the employer appealed. Briefing is in progress

► ***California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms., California Supreme Court, Case No. S230890 Case No. E063489 (4th DCA); 41 ALRB No. 2***

Summary: Petition for writ of review of Board's decision finding that employer unlawfully terminated and discriminated against employees based on their union activity and refused to rehire workers based on their union activity. On May 7, 2015, Petitioner filed its petition for review of the Board's decision in 41 ALRB No. 2. Briefing was completed by September 18. The matter was summarily dismissed on November 18, 2015.

Status and Last Action Date: Employer filed a petition for review on December 1, 2015. The Board's response is due December 21, 2015.

California Appellate Courts

Fifth District Court of Appeal

- ▶ ***Ace Tomato Company, Inc., Fifth District Court of Appeal, Case No. F065589 (38 ALRB No. 6)***

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.

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. As of January 20, 2015, the matter has been pending with the court.

- ▶ ***Gerawan Farming, Inc. v. ALRB, et al., Fifth District Court of Appeal, Case No. F069896, Fresno County Superior Court, Case No. 13-CECG-03374***

Summary: Gerawan challenges the Board's August 21, 2013 order that MMC proceedings are closed to the public. Gerawan brings this direct appeal from the superior court order granting the Board's demurrer to Gerawan's complaint for declaratory and injunctive relief.

Status and Last Action Date: Amicus brief on behalf of a press coalition, The Reporters Committee for Freedom of the Press, The First Amendment Coalition, and the California Newspaper Publishers' Association, was allowed to be filed on June 5, 2015. On June 18, 2015, the UFW's request to file a brief as party was denied. Briefing is completed and the case is pending with the court for decision.

- ▶ ***Lupe Garcia v. California Agricultural Labor Rel. Bd., et al., Fifth District Court of Appeal, Case No. F070287, Fresno County Superior Court, Case No. 13-CECG-03374***

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).

Status and Last Action Date: As of August 26, 2015, briefing is completed. Pending court ruling.

- ▶ ***Arnaudo Brothers, LP, and Arnaudo Brothers, Inc. (“Arnaudo”) v. ALRB, et al., Fifth District Court of Appeal, Case No. F071598 (41 ALRB No. 3, 39 ALRB No. 7, et al.)***

Summary: Petition for writ of review of Board’s decision ordering mediator’s findings after mandatory mediation and conciliation.

Status and Last Action Date: Board’s motion to dismiss for untimely filing granted October 30, 2015, and petition dismissed. Case concluded.

- ▶ ***Arnaudo Brothers, LP, and Arnaudo Brothers, Inc. (“Arnaudo”) v. ALRB, et al., Fifth District Court of Appeal, Case No. F072420 (40 ALRB No. 3, 41 ALRB No. 6.)***

Summary: Petition for writ of review of Board’s decision ordering makewhole for Employer’s failure to provide information and failure to bargain in good faith.

Status and Last Action Date: Petition filed September 30, 2015. Employer’s opening brief is due January 31, 2016; Board’s brief due March 6, 2016.

Sixth District Court of Appeal

- ▶ ***United Farm Workers (Corralitos Farms, LLC), Sixth District Court of Appeal, Case No. H041113 (40 ALRB No. 6)***

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

Status and Last Action Date: Case fully briefed. Matter stayed by bankruptcy order, July 24, 2015.

- ▶ ***Kawahara Nurseries, Inc., Sixth District Court of Appeal, Case No. H041686 (40 ALRB No. 11)***

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.

Status and Last Action Date: The Employer’s reply brief was filed May 18, 2015, by stipulated extension. The matter is pending decision by the court.

California Superior Courts

▶ ***Francisco Aceron v. ALRB, Sacramento County Superior Court, Case No. 34-2014-00168939***

Summary: Francisco Aceron, a current ALRB employee with the Office of the General Counsel, filed a Complaint for Discrimination and Harassment arising out of 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. Discovery is ongoing.

▶ ***Pauline Alvarez v. ALRB, Sacramento County Superior Court, Case No. 34-2015-00185535***

Summary: Pauline Alvarez, a current ALRB employee with the Office of the General Counsel, filed a Complaint for Discrimination and Harassment arising out of employment.

Status and Last Action Date: Service of the complaint has not been effected.

▶ ***Gerawan Farming, Inc. v. ALRB, [Public Records Act] Sacramento County Superior Court, Case No. 34-2015-80002100***

Summary: Litigation demand (writ of mandamus, complaint for declaratory and injunctive relief) for documents communicated between the Board and the General Counsel on or about May 12, 2015, in the context of the General Counsel's seeking Board authority to request injunctive relief concerning unfair labor practices alleged against Gerawan Farming, Inc.

Status and Last Action Date: The petition-complaint was filed on June 2, 2015. The court set a hearing for January 8, 2016.

▶ ***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)***

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).

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 on November 2014 have been vacated.

Gerawan Farming, Inc. v. ALRB [TRO], Fresno County Superior Court Case No. 14-CECG-00987

Summary: Application for Temporary Restraining Order in support of unfair labor practices alleging unlawful termination of an agricultural employee.

Status and Last Action Date: The court denied the application for TRO on The TRO was denied on June 10, 2015, and the General Counsel thereafter dismissed the complaint. Matter concluded.

5. GENERAL COUNSEL'S REPORT:

Acting General Counsel Woo-Sam expressed his appreciation for the opportunity to serve as the Acting General Counsel. He reported there have been 57 unfair labor practice filings, 46 cases have been closed, and 8 settlements have been reached. Job announcements for two regional director positions have been posted. Attorney Xavier Sanchez has been hired in the Visalia Office. Other positions will be announced soon. Mr. Woo-Sam is asking Labor and Workforce Development Agency to assist with the opening of a Northern California office. In the spirit of the Governor's realignment process, field examiners and regional directors will be given more discretion in investigations. The General Counsel's Office is interested in maximizing educational outreach opportunities and by modifying job duties to create more components of education and outreach.

6. CHIEF OF ADMINISTRATION REPORT

Completed State Reports –June 15, 2015 – December 1, 2015

DGS Fleet Card Program Annual Certification
Dymally-Alatorre Bilingual Services Act Update
CalHR Quarterly ACA Compliance Certification
California Information Security Office Designation Letter (SIMM 5330-A)
California Whistleblower Protection Act Exercises & Report
Agency Operational Recovery Plan Certification (SIMM 5325-B)
2014 Fiscal Year End Financial Statements & Reports
DGS Consolidated Annual Report
Agency Information Management Organization (SIMM 5330-A/SAM 4903.1)
DGS Annual State Agency Defensive Driver Training Report
DGS Prompt Payment Act Annual Report
DGS Fleet's SB 552 Gap Report
Cal-Recycle's State Agency Buy Recycled Campaign (SABRC) Report
Employer Reporting Requirements Under the Affordable Care Act
DGS EAct GAP Report
DGS Annual Mobile Equipment Inventory Report
Nationwide Cyber Security Review Self-Assessment Report
California State Records Management Self-Evaluation
State Department's DVBE Subcontracting Consolidation Report

Reports In-Process/Upcoming

State Leadership Accountability Act (SLAA) Report & Corrective Action Plan – Due December 31, 2015
Government Fleet Smog Check Program Report – Due December 31, 2015
FTB 1099 Reporting for Calendar Year 2015 – Due January 8, 2016
Software Management Policy Annual Statement of Compliance – Due January 31, 2016
Annual Agency Designation Letter (SIMM 5330-A) – Due January 31, 2016
Annual Agency Risk Management and Privacy Program Compliance Certification (SIMM 5330-B) – Due January 31, 2016
Annual DGS EPAct Drill – Due January 31, 2016
Annual Information Management Costs and Technology Cost Report – Due February 1, 2016
Annual DGS EIA 886 Drill – Due February 28, 2016

7. REGULATIONS

- a. Proposed rulemaking for electronic filing of documents – On November 16, 2015, copies of the proposed regulatory language were circulated to ALRB staff for review to provide any comment and or feedback by December 7th. Once those documents are finalized, they will be submitted to the Office of Administrative Law.
- b. Proposed rulemaking for education of agricultural workers and supervisors - The Board considered a staff proposal for regulations to allow access at agricultural work sites by ALRB agents to provide education about legal protections for concerted activity under the Agricultural Labor Relations Act (ALRA). Chairman Gould, who introduced the item, described the consensus from the Board hearings held this summer that worker education about the ALRA is needed. In his remarks, referring to the findings from the public hearings held in Fresno, Salinas, and Santa Maria, and as explained in the staff proposal, Chairman Gould noted that meaningful access to education about the ALRA is restricted or non-existent due to the nature of the California agricultural workers' experience. After public comment, some further explanation from staff about the proposal, and discussion, the Board voted 3-0 to direct staff to move forward with the regulatory process.

8. LEGISLATION

AB 266 (Bonta, Cooley, Jones-Sawyer) (Medical Marijuana; definition of agricultural employer)

- a. Introduced February 10, 2015
 - i. As amended June 2, 2015, this bill would enact the Medical Cannabis Regulation and Control Act (Gov. Code, § 19301 et seq.), a comprehensive regulatory scheme for the control and regulation of medical marijuana.

- ii. As concerns the ALRB, the bill no longer amends Labor Code section 1155.7 to define “agricultural employer” to include a licensed cultivation site or a licensed dispensing facility, as defined; however, this bill would include licensed cultivation sites in the definition of “agricultural employer.”

b. Status:

- i. Enacted, Chapter 689 (2015) (October 9, 2015)

AB 561 (Campos) (Authority for compliance with Board’s remedial monetary awards; time to process compliance; employer bonds on appeal)

a. Introduced February 24, 2015

- i. The bill adds Labor Code section 1149.3 to require a final Board order for compliance within one year of any compliance decision.
- ii. The bill adds Labor Code section 1164.8 to require an employer who seeks appellate review of any Board order to post a bond for the entire economic value of the Board’s order, as determined by the Board.
- iii. April 8, 2015, heard in Assembly Labor & Employment Committee: The author removed language that would amend Labor Code section 1149 to establish primary authority in the General Counsel for calculation and prosecution of the Board’s remedial monetary awards, subject to Board review for negligence or delay; other proposed amendments, described above, remain. Passed to Appropriations on 5-2 vote (Noes: Patterson, Harper).

b. Status:

- i. Passed both houses; Governor vetoed on October 9, 2015
- ii. Governor Brown’s Comments:

To the Members of the California State Assembly:
I am returning Assembly Bill 561 without my signature. This bill requires the Agricultural Labor Relation's Board to process all decision orders within one year upon finding an employer liable for benefits due to unfair labor practices. This bill also requires employers who appeal a Board order to post a bond in

the amount of the entire economic value of the order. While I support the overall goal of this bill, I am concerned that the timeline proposed does not provide for unexpected delays or litigation. In most cases the Board is able to expedite final adjudication of monetary awards within 18 months. As I stated in my veto message on SB 25 last year, I believe what is needed is a balanced approach to resolving issues concerning the fair and effective enforcement of the Agricultural Labor Relations Act. As such, I am directing the Board to examine the current process and make the necessary internal reforms to provide for more timely orders.

AB 1389 (Patterson) (Co-authors, Grove, Chavez) (Mandatory Mediation and Conciliation)

- a. Introduced February 27, 2015
 - i. On May 4, 2015, bill is amended: 1) makes it an unfair labor practice for a union to “abandon or fail to represent” the bargaining unit for a period of three years or more and requires the Board to order decertification; 2) defines unit members as “parties” to MMC process and permits attendance at MMC proceedings; 3) allows the Board’s MMC order to be effective only after ratification by unit members.
- b. Status:
 - i. After hearing on May 6, 2015, in Assembly Labor & Employment Committee, the bill, as amended, failed to pass (2 ayes, 5 noes). Granted reconsideration. No hearing set.
 - ii. Failed in committee.

9. PERSONNEL – June 15, 2015 to December 2, 2015.

Appointments

- Alexis Romero; Staff Services Analyst, Salinas Regional Office; 06/15/2015
- Mark Woo-Sam; Acting General Counsel, Office of the General Counsel, Sacramento Office; 07/01/2015
- Bianca Angulo; Legal Intern, Office of the Board; 08/24/2015
- Miles Locker; Hearing Officer II (2-Year Limited Term), Office of the Executive Secretary; 10/05/2015
- Savannah Mendoza, Student Assistant, 10/08/2015

Separations

- Abdel Nasser; Attorney, Oxnard Sub-Regional Office; 06/20/2015
- Sylvia Torres-Guillen; General Counsel, Office of the General Counsel, Sacramento HQ; 06/20/2015
- Erica Fernandez-Zamora; Field Examiner I, Oxnard Sub-Regional Office; 07/30/2015
- Diego Vera; Legal Intern, Office of the Board; 08/14/2015
- Silas Shawver; Associate General Counsel, ULP, ALRB, Visalia Regional Office; 08/31/2015
- Arun Chatterjee, Accounting Officer, Office of Administration, Sacramento HQ; 10/07/2015
- William Kocol; Hearing Officer I; 11/13/2015

Current Recruitment/Job Opportunity Bulletins

Law Student Intern (Volunteer); Office of the Executive Secretary, Sacramento
Staff Services Analyst, Salinas Regional Office
Staff Services Analyst, Visalia Regional Office
Staff Services Analyst, Office of Administration
Field Examiner I, Oxnard Sub-Regional Office
Attorney/Graduate Legal Assistant, Visalia Regional Office

10. ANNOUNCEMENTS

None

The public meeting adjourned at 12:08 p.m.