

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 23, 2017

Time: 10:03 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck, Inciardi and Ratshin; Special Legal Advisor Blanco; Analysts Cooper and Massie
Others Present: ALRB: General Counsel Montgomery; Deputy General Counsel Shawver; Regional Directors Herrera and Schneider; Chief for the Division of Administrative Services Rodrigues; Accountant Kumar; Department of Finance: Principal Program Budget Analyst Halterman

OPEN SESSION

- 1. Approval of Minutes:** Board approved 2-0 the minutes of January 12, 2017. Member Hall abstained.
- 2. Public Comment:** None at this time.
- 3. Chairwoman's Report:**

Chairwoman Shiroma welcomed Board Member Isadore Hall III and cited his extensive public sector experience as a former school board member, city council member, member of the State Assembly and member of the State Senate. Ms. Shiroma congratulated Member Hall and General Counsel Montgomery on their recent approval for confirmation by the Senate Rules Committee.

Since the last meeting, Chairman William B. Gould IV's term ended and Governor Brown designated Ms. Shiroma as chairwoman. Ms. Shiroma thanked Chairman Emeritus Gould for his valuable service to the Agricultural Labor Relations Board (ALRB or Board) and the ease of the transition of the leadership. Chairman Gould worked tirelessly to garner needed resources, substantially added to the ALRB's body of law, streamlined hearings, and brought stature to the ALRB.

Ms. Shiroma thanked all ALRB employees for their contributions towards the continued the effective implementation of the Act. The employees' commitment, dedication and efforts in carrying out the mission of the ALRB are essential and very much valued by the Board.

In the next few months, the Board plans to visit the Regional Offices and satellite offices. The Board members plan to meet with local growers and tour various agricultural operations.

Ms. Shiroma acknowledged Member Rivera-Hernandez' role in relocating the El Centro ALRB office to Indio.

Regarding the Board's budget, Chairman Emeritus Gould was the strongest proponent of the original budget change proposal (BCP) for staff and the current BCP. He was adamant that the Board's three limited-term positions be made permanent, and would have liked significantly more than what was sought if the State could have afforded it. Detractors are misconstruing what the former Chairman said in his law review article. At no point did his support for these positions waiver. This is a very modest proposal and we are looking forward to full approval from the Senate and Assembly. Ms. Shiroma thanked Analyst Cooper for her work in gathering the information required and preparing the BCP.

The Board plans to hold meetings every other month. Public meetings are scheduled for May 11, July 13, September 14 and November 9, 2017. The Board's minutes, available on our website, highlight the volume of work the department is performing.

Member Hall expressed that he is honored to serve on the Board and grateful to Governor Brown and his fellow members. Member Hall's 17 years of public service have given him a wide perspective and he hopes to transfer that knowledge to the Board. Mr. Hall thanked Analyst Cooper, Executive Secretary Barbosa, and everyone else who assisted him in his transition to his new position. Mr. Hall extended congratulations to Chairwoman Shiroma on her appointment.

4. Executive Officer’s Report on Elections, Unfair Labor Practice Complaints, Hearings and Court Litigation

ELECTION REPORT

Since the Board’s last meeting in January 12, 2017, there have been no new notices of intent to take access (NAs) and no new notices of intent to organize (NO). One new decertification and intervenor petitions filed in Monterey Farms, Inc., 2017-RD-001-SAL/2017-RC-001-SAL.

Monterey Farms, Inc., 2017-RD-001-SAL/2017-RC-001-SAL

On February 16, 2017, agricultural employee Antonio Gamboa filed a decertification petition seeking to remove the incumbent certified bargaining representative United Food & Commercial Workers, Local 5. On February 21, 2017, the United Farm Workers filed a representation petition seeking to replace the incumbent representative. The Board conducted an election on February 23, 2017, with the following results:

UFCW	38
UFW	32
No Union	2
Unresolved Challenged Ballots	<u>0</u>
Total	72

On March 2, 2017, the United Farm Workers filed two objections to the election. The objections are before the Board on review and a decision is pending.

COMPLAINT REPORT

Since the Board’s last meeting, the General Counsel has not issued any new complaints.

NEW COMPLAINTS ISSUED

None.

COMPLAINTS SETTLED PRIOR TO HEARING

Konark Ranches LLC, 2015-CE-048-VIS

Informal Settlement Agreement pending finalization as of 03/07/17.

COMPLAINTS WITHDRAWN

None.

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

There are three hearings currently scheduled: one in March (United Farm Workers/Angel Lopez), one in May (Airdrome Orchards) and one in June (Pacific Ag Management).

United Farm Workers of America (Angel Lopez) - 2015-CL-006-VIS

Hearing: March 28, 2017

Airdrome Orchards, Inc., 2016-CE-002-VIS

Hearing: May 16, 2017

Pacific Ag Management, Inc., Case Number 2015-CE-043-VIS.

Hearing: June 20, 2017

HEARINGS HELD

United Farm Workers (Olvera/Magana), 2013-CL-002-SAL

Hearing: February 28, 2017 – March 9, 2017 (8 days)

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

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

Post-hearing briefs filed December 16, 2017. Pending ALJ decision.

United Farm Workers (Olvera/Magana), 2013-CL-002-SAL

Hearing ended March 9, 2017. Post-hearing briefs due April 17, 2017.

ALJ/IHE DECISIONS ISSUED

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

None.

CASES PENDING BOARD DECISION OR ACTION

Monterey Farms, Inc., 2017-RD-001-SAL/2017-RC-001-SAL

Pending decision on election objections filed by UFW on February 21, 2017.

CASES REFERRED TO COMPLIANCE

None.

COMPLIANCE CASES CLOSED

None.

THE BOARD HAS NOT ISSUED ANY NEW BOARD DECISIONS and ISSUED TWO ADMINISTRATIVE ORDERS

BOARD DECISIONS ISSUED

None.

ADMINISTRATIVE ORDERS

Konark Ranches, LLC, 2015-CE-048-VIS

Order Setting Time for Response to General Counsel's Request for Board Action to Enforce Subpoena Duces Tecum (Admin. Order 2017-001)

Konark Ranches, LLC, 2015-CE-048-VIS

Order Granting General Counsel's Request for Board Action to Enforce Subpoena Duces Tecum (Admin. Order 2017-002)

MANDATORY MEDIATION AND CONCILIATION

Mushroom Farms, Inc., 2016-MMC-001

On August 9, 2016, The United Food and Commercial Workers, Local 5 (UFCW), filed a petition seeking a referral to Mandatory Mediation and Conciliation (MMC) on August 9, 2016. On August 17, 2016, the Board issued a decision and order directing the Employer and UFCW to mandatory mediation and conciliation (MMC). The parties selected Matt Goldberg as the mediator and met for mediation on December 13, 2016. The parties were scheduled to meet again on January 20, 2016, for their second session. In the interim, the parties agreed to investigate and collect additional data necessary to mediate contract articles that remain in dispute.

The parties met for the first day of mandatory mediation on December 13, 2016. The parties were previously scheduled to hold the second hearing date on December 16, 2016, but mutually agreed to postpone it to Friday, January 20, 2017. The second hearing date, moved to Friday, January 20, had to be postponed due to a health issue. The parties did not meet on January 20 as a result. The parties met at end of February and are scheduled to meet again on April 4.

ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

► Tri-Fanucchi Farms v. ALRB, California Supreme Court Case No. S227270

Summary: Petitions for review of the Fifth District Court of Appeal's decision affirming in part and reversing in part the Board's decision and order in 40 ALRB No. 4, in which the Board found the Employer committed unfair labor practices and awarded bargaining makewhole as a remedy. The appellate court upheld the Board's decision denying the Employer's abandonment defense, but set aside the Board's ruling as to the makewhole remedy.

Status: The matter is fully briefed. On January 31, 2017, the court issued a letter to the parties advising that oral argument may be set in the upcoming months.

► T.T. Miyasaka, Inc. v. ALRB, Sixth District Court of Appeal, Case No. H044198

Summary: Petition for writ of review of the Board's decision in 42 ALRB No. 5, in which the Board found the Employer unlawfully maintained an arbitration agreement that employees reasonably could understand prohibited the filing of unfair labor practice charges in violation the Agricultural Labor Relations Act.

Status: The court granted the parties' stipulated briefing schedule on February 7, 2017. The Employer's opening brief is due April 17, 2017, and the Board's opposition brief is due June 15, 2017.

► **Magaña v. ALRB (T.T. Miyasaka, Inc.), Sixth District Court of Appeal, Case No. H044175**

Summary: Petition for writ of review of the Board's decision in 42 ALRB No. 4, in which the Board dismissed unfair labor practice allegations against the Employer claiming a class action waiver in the Employer's arbitration agreement violated the Agricultural Labor Relations Act.

Status: The court granted the parties' stipulated briefing schedule on February 7, 2017. The Employer's opening brief is due April 17, 2017, and the Board's opposition brief is due June 15, 2017.

► **Premiere Raspberries, LLC dba Dutra Farms v. ALRB, Sixth District Court of Appeal, Case No. H044197**

Summary: Petition for writ of review of the Board's decision in 42 ALRB No. 5, in which the Board found the Employer unlawfully maintained an arbitration agreement that employees reasonably could understand prohibited the filing of unfair labor practice charges in violation the Agricultural Labor Relations Act.

Status: The court granted the parties' stipulated briefing schedule on February 7, 2017. The Employer's opening brief is due April 17, 2017, and the Board's opposition brief is due June 15, 2017.

► **Cruz v. ALRB (Premiere Raspberries, LLC dba Dutra Farms), Sixth District Court of Appeal, Case No. H044179**

Summary: Petition for writ of review of the Board's decision in 42 ALRB No. 4, in which the Board dismissed unfair labor practice allegations against the Employer claiming a class action waiver in the Employer's arbitration agreement violated the Agricultural Labor Relations Act.

Status: The court granted the parties' stipulated briefing schedule on February 7, 2017. The Employer's opening brief is due April 17, 2017, and the Board's opposition brief is due June 15, 2017.

Mandatory Mediation and Conciliation Litigation

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

Summary: Petition for writ of review asserting various statutory and constitutional challenges to Board's decision in 39 ALRB No. 17, where the Board approved a mandatory mediation and conciliation contract between the Employer and Union.

Status: The matter is fully briefed. On January 31, 2017, the court issued a letter to the parties advising that oral argument may be set in the upcoming months.

► Gerawan Farming, Inc. and Lupe Garcia v. ALRB, et al., Fresno County Superior Court Case No 13-CECG-03374

Summary: Employer's complaint for declaratory and injunctive relief alleging the Board's decision in 39 ALRB No. 13 unconstitutionally violates employees' First Amendment right of access to mandatory mediation and conciliation proceedings. An agricultural employee of the Employer intervened in the case alleging similar constitutional access claims.

Status: The parties filed cross-summary judgment motions on January 11, 2017, and briefing was completed on March 13. The court had set a hearing on the motions for March 22, 2017, but then continued the hearing to April 5.

► Spawn Mate, Inc. dba Mushroom Farms v. ALRB, et al., Monterey County Superior Court, Case No. 16CV003804

Summary: Employer's complaint for injunctive relief to stay pending mandatory mediation and conciliation proceedings.

Status: The Board filed a demurrer to the Employer's complaint on February 14, 2017. The hearing on the demurrer took place on March 17, 2017, and the court took the matter under submission. A trial date is set for July 31, 2017.

Other Board Litigation

► Cedar Point Nursery and Fowler Packing Co. v. Gould, et al., U.S. Court of Appeals, Ninth Circuit, Case No. 16-16321

Summary: Complaint for injunctive and declaratory relief seeking an order to overturn the Board's access regulation (Cal. Code Regs., tit. 8, § 20900) on constitutional grounds under the Fourth and Fifth Amendments. Plaintiffs appeal from the district court's order dismissing their constitutional claims.

Status: Plaintiffs filed their opening brief on December 5, 2016. The Board filed its answering brief on February 3, 2017. On February 10, 2017, the United Farm Workers of America filed an amicus brief in support of the Board. Plaintiffs' reply brief was filed March 20, 2017. Briefing now is complete.

► Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F073720

Summary: Petition for writ of review of the Board's decision in 42 ALRB No. 1, in which the Board dismissed a decertification petition, set aside a decertification election, and found the Employer committed unfair labor practices.

Status: The Employer filed its reply brief on due January 20, 2017. The court issued a writ of review that same day. On January 25, 2017, various grower groups filed an amici curiae brief in support of the Employer. The Board filed its answer to the amici brief on February 10, 2017. Briefing now is complete, and the parties are awaiting scheduling of oral argument.

► **Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F074423**

Summary: Petition for writ of mandate to compel Board to reverse an administrative law judge's ruling revoking subpoenas served by the Employer in an unfair labor practice proceeding. The Employer appeals the superior court's judgment dismissing the case after sustaining a demurrer filed by the Board without leave to amend.

Status: The Employer's opening brief was due March 20, 2017. The Employer did not file a brief that day, but instead filed a motion to place the appeal in abeyance. Any responsive brief by the Board is due April 5, 2017.

► **Gerawan Farming, Inc. v. ALRB, Sacramento County Superior Court, Case No. 34-2015-80002100**

Summary: Petition for writ of mandate under the California Public Records Act seeking to compel disclosure of communications between the Board and General Counsel relating to a decision to seek injunctive relief against the Employer.

Status: On January 31, 2017, the superior court entered judgment in favor of the Board and denying the Employer's petition for writ of mandate in its entirety. On February 21, 2017, the Employer filed a motion to vacate the judgment. The hearing is scheduled for August 4, 2017. The Board's opposition is due July 24, 2017.

5. General Counsel's Report

General Counsel Montgomery welcomed and congratulated Chairwoman Shiroma and Member Hall on their recent appointments. Ms. Montgomery reported on her current efforts to hire staff and fill vacancies. She is hoping to have a full staff in the near future. She has developed a plan for monthly staff training, development, and mentorship based on topics staff have chosen. Ms. Montgomery continues to look for new training opportunities.

Currently there are approximately 131 pending investigations. With the addition of a second Regional Director, Ms. Montgomery anticipates reducing the current backlog and moving cases forward soon. The Board will see more filings in the near future. Timelines for investigations have been implemented to relieve the backlog.

General Counsel Montgomery announced the opening of the ALRB Indio office. This relocation of this office from El Centro was a joint effort with Board. The administration team has been working tirelessly to overcome obstacles and get the office open. Ms. Montgomery thanked all staff involved in the relocation.

Ms. Montgomery announced she is increasing outreach efforts and working to improve outreach in both delivery and materials. She is seeking better ways to get information to both the farmworker and grower communities. The General Counsel's office is coming up with new materials and ideas to disseminate information including working with entities that serve the grower and farmworker communities. The General Counsel Office continues to work with sister agencies to disseminate information. Staff recently participated in a daylong training held by the Labor Agency.

6. Chief of Administration's Report

Chief for the Division of Administrative Services Rodrigues congratulated Chairwoman Shiroma and Member Hall on their recent appointments. Ms. Rodrigues introduced Department of Finance Principal Budget Analyst Mary Halterman who is assigned to the ALRB. The Assembly Budget Subcommittee held a hearing on March 21 regarding the ALRB's budget change proposal. Two written oppositions and one verbal in support of the change were submitted to the committee. The Legislative Analyst's Office had no questions. The Department of Finance supports the proposal. Ms. Rodrigues is retooling how the information will be presented at the next hearing since there appeared to be some confusion regarding the structure of the ALRB.

Member Rivera-Hernandez acknowledged that there is a fundamental confusion regarding the fact that there are two separate programs within the ALRB, the General Counsel program and the Board program. The legislature needs to be educated on the structure of the department. The General Counsel's budget increased substantially in previous years whereas the Office of the Board's budget has not increased in kind. The Board's work is based on complaints issued by the General Counsel's Office.

The Indio ALRB office opened February 15. Work continues to resolve some remaining technology issues. Ms. Rodriguez will visit the new offices separately from the Board. She is exploring Department of Human Resources training for the remote locations.

7. Regulations

Chairwoman Shiroma introduced this agenda item by acknowledging that the Office of Administrative Law (OAL) and the Department of Finance operate under Government Codes which require comprehensive analyses on not only the legal and policy underpinnings on the need for regulations but also the potential financial impacts. This applies to all regulations. We are at the point with two regulations where the staff are poised to put the final touches to the effort and we will hear more detail on that in a moment. On our third regulatory effort towards providing education for farmworkers through access for our staff, the staff needs to complete some of those additional required analyses before a formal public comment process can be commenced and approved through the OAL.

Special Legal Advisor Blanco reported the final package on the consolidation regulation that the Board voted to adopt at its last meeting will be sent to OAL within the next two weeks. Board Counsel Heyck reported the E-filing regulation that the Board also voted to adopt at its last meeting will also be filed soon with OAL.

8. Legislation – No changes since last meeting.

AB 12, Cooley. Introduced Dec. 5, 2016. State government: administrative regulations: review.

Existing law authorizes various state entities to adopt, amend, or repeal regulations for various specified purposes. The Administrative Procedure Act requires the Office of Administrative Law and a state agency proposing to adopt, amend, or repeal a regulation to review the proposed changes for, among other things, consistency with existing state regulations.

This bill would require each state agency to, on or before January 1, 2020, review that agency's regulations, identify any regulations that are duplicative, overlapping, inconsistent, or out of date, to revise those identified regulations, as provided, and report to the Legislature and Governor, as specified. The bill would repeal these provisions on January 1, 2021.

- 9. Announcements** – The annual California Agriculture and Farm Labor Conference will be held Friday, April 14, 2017 at the UCD Law School of Law. Chairwoman Shiroma will be chairing the panel on ALRB Issues and Cannabis. Former ALRB Chairman Gould will be a participant on the panel along with ALRB General Counsel Julia Montgomery, ALRB Special Legal Advisor Ed Blanco, United Food and Commercial Workers Agricultural Director Pete Maturino, and UC Davis Agricultural Issues Center Director Daniel Sumner.

Members Hall and Rivera-Hernandez, and General Counsel Montgomery will be visiting agricultural operations in the Coachella Valley area and the recently opened ALRB Indio office at the beginning of April, as well as making other trips to ALRB offices.

The Regional Directors will meet with the Board following this meeting at 1:30 p.m. in the ALRB conference room.

The public meeting adjourned at 10:45 a.m.