

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 22, 2017

Time: 1:34 p.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Acting Executive Secretary Soble, Board Counsel Heyck, Inciardi and Ratshin; Analysts Cooper and Massie
Others Present: ALRB: General Counsel Montgomery; General Counsel Attorney Craig; Chief for the Division of Administrative Services Rodrigues; LWDA: General Counsel Woo-Sam

OPEN SESSION

- 1. Approval of Minutes:** Board approved 3-0 the minutes of March 23, 2017.
 - 2. Public Comment:** On May 15, 2017, a letter from Attorney David Schwarz on behalf of his client, Gerawan Farming, Inc., regarding Case No. 2012-CE-041-VIS, et al., was sent to Acting Executive Secretary Mark Soble. At Mr. Schwarz' request, the letter is attached to the minutes of this meeting as part of the public comment. Copies of the letter were made available to meeting attendees. Since this matter was currently pending before the Board, the Board did not discuss the letter or its contents.
- ❖ **Amendment of Proposed E-Filing Regulations**—The Board revised the agenda to consider the amendment of the proposed e-filing regulation at this point in the meeting.

Board staff presented the following summary to the Board: The proposed E-filing regulations were introduced in late spring 2016, and underwent public review. The Board voted 3-0 to adopt the proposed E-filing regulations at its January 12, 2017 Board meeting. Staff then submitted the rulemaking file to the Office of Administrative Law (OAL) for review.

During the OAL review period, OAL raised a concern about the clarity of the word “accepted” in Section 20169(e) of the proposed regulation. In response, proposed Section 20169(e) was amended as follows to clarify what requirements for filed documents the Board will review before sending a confirmation email to the filing party:

(e) Once a document filed by email is received and accepted has been determined to have met requirements of subdivision (a)(5) and (6), a confirmation email will be sent to the email address on file by the close of the business day.

The ALRB published the amendment to Section 20169(e) in a 15-day notice to the public. No public comments were received.

Following adoption of the proposed amended Section 20169(e), staff will submit updated file documents to OAL for their final approval of the regulation.

The Board voted 3-0 to adopt proposed Section 20169(e) as amended.

3. Chairwoman’s Report:

The ALRB was a co-sponsor of the 2017 California Agriculture and Farm Labor Conference at UC Davis on Friday, April 14, 2017. The daylong conference featured various speakers representing growers, farm workers, labor organizations, federal and state government, and academia.

Fruits and vegetables were two thirds of California's \$47 billion in farm sales in 2015, agricultural employment has been increasing to an average 420,000, and almost 850,000 unique hired workers employed sometime during the year on the state's farms. Farm workers are mostly unauthorized Mexican-born men who have settled in California with their families.

Four timely issues were discussed during the 2017 farm labor conference. First is that fresh-produce buyers are requiring growers to abide by labor and other protocols that go beyond government regulations in order to sell them commodities. Second is the four-S response of farmers to fewer new farm workers. These include (1) Satisfying current workers in terms of wages and benefits, (2) Stretching them with mechanical aids, (3) Substituting machines for hand harvesting/packing workers or switching to less labor-intensive crops, and (4) Supplementing current workers with younger H-2A guest workers. The third issue discussed are the likely effects of the Trump Administration's enforcement of laws against unauthorized migration on farm workers

and agriculture. The fourth discussion item was a review of ALRB activities and the status of the state's cannabis industry and its workforce.

The summary and copies of presentations can be found at <https://gifford.ucdavis.edu/events> [as of May 22, 2017].

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

ELECTION REPORT

Since the Board's last meeting on March 23, 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 petition was 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. On March 24, 2017, the Board issued a decision, 43 ALRB No. 1, dismissing both objections.

COMPLAINT REPORT

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

COMPLAINTS SETTLED PRIOR TO HEARING

- **Pacific Ag Management, Inc., 2015-CE-043-VIS**
Informal Settlement Agreement, pending request to take off calendar as of May 19, 2017.

COMPLAINTS WITHDRAWN

None.

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

There is one hearing currently scheduled:

- **Airdrome Orchards, Inc., 2016-CE-002-VIS**
Hearing: July 18, 2017 (continued due to health of one attorney)

HEARINGS HELD

- **United Farm Workers (Angel Lopez), 2015-CL-006-VIS**
Hearing: March 28, 2017 – April 4, 2017 (4 days)

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

- **United Farm Workers (Olvera/Magaña), 2013-CL-002-SAL**
Hearing ended March 9, 2017. Post-hearing briefs received April 25, 2017.
- **United Farm Workers (Angel Lopez), 2015-CL-006-VIS**
Hearing ended April 4, 2017. Post-hearing briefs received May 11, 2017.

ALJ/IHE DECISIONS ISSUED

- **Gerawan Farming, Inc., 2012-CE-041-VIS**
ALJ Decision issued on April 14, 2017.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

- **Gerawan Farming, Inc., 2012-CE-041-VIS**
Exceptions and briefs are due May 25, 2017. Reply briefs are due June 9, 2017.

CASES PENDING BOARD DECISION OR ACTION

- **Mushroom 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

- **H & R Gunlund Ranches, 2009-CE-063-VIS**
- **Arnaudo Brothers LP, 2015-CE-004-VIS**

COMPLIANCE CASES CLOSED

None.

THE BOARD HAS NOT ISSUED ANY NEW BOARD DECISIONS and ISSUED ONE ADMINISTRATIVE ORDER

BOARD DECISIONS ISSUED

None.

ADMINISTRATIVE ORDERS

- **Gerawan Farming, 2012-CE-041-VIS, et al.**
Order Denying Gerawan Farming, Inc.'s Motion to Disqualify Member Isadore Hall; Order Denying Request for Stay (Admin. Order 2017-03)

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, and, after postponement due to a health issue, met again on April 4, 2016. The

parties met for a final time of May 8, 2017, and will be submitting briefs to the mediator on or about June 7, 2017.

ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

► ***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: On April 12, 2017, the employer filed a request for dismissal of its petition for review, with prejudice. On April 20, the court entered an order granting the request for dismissal and denying the petition for review as moot.

► ***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: Petitioner filed his opening brief on April 17, 2017. 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: On April 12, 2017, the employer filed a request for dismissal of its petition for review, with prejudice. On April 20, the court entered an order granting the request for dismissal and denying the petition for review as moot.

► ***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: Petitioner filed his opening brief on April 17, 2017. The Board's opposition brief is due June 15, 2017.

► ***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: Briefing is complete, and the parties are awaiting scheduling of oral argument. On May 2, 2017, the UFW filed a request for judicial notice of an ALRB ALJ's decision in unfair labor practice case no. 2013-CE-041-VIS. Gerawan filed an opposition to the judicial notice request on May 18.

► ***Sabor Farms, LLC v. ALRB, Sixth District Court of Appeal, Case No. H043618***

Summary: Petition for writ of review of the Board's decision in 42 ALRB No. 2, in which the Board found Sabor unlawfully terminated two employees based on their protected concerted activity.

Status and Last Action Date: On May 5, 2017, the court issued an order denying the petition for review. Sabor had 10 days to file a petition for review of that order in the California Supreme Court, and no such petition has been filed.

► ***Arnaudo Brothers v. ALRB, Fifth District Court of Appeal, Case No. F072420***

Summary: Petition for writ of review of the Board's decisions in 40 ALRB No. 3 and 41 ALRB No. 6, in which the Board found Arnaudo unlawfully failed and refused to bargain with the United Farm Workers and awarded bargaining makewhole relief.

Status and Last Action Date: On April 11, 2017, the court issued a letter to the parties stating it intends to take judicial notice of legislative history of the mandatory mediation and conciliation statute, inviting any opposition(s) from the parties by April 25. No party filed an opposition. On May 10, the court issued a calendaring notice scheduling oral argument for Wednesday, June 21, at 9:00 a.m.

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

Summary: Petition for writ of review of the Board's decision in 40 ALRB No. 6, in which the Board found the UFW unlawfully picketed for representative status.

Status and Last Action Date: On April 5, 2017, the court requested a status update from the parties regarding the bankruptcy proceeding. The Board responded on April 10, stating it had no information concerning the current status of the Corralitos' bankruptcy proceeding. Also on April 10, Corralitos filed a letter stating it had dissolved effective December 31, 2016, and that the petition for review is moot. The UFW filed a letter in opposition to Corralitos' mootness claim on April 28. On May 18, the Board filed a response to Corralitos' and UFW's positions on the issue of mootness.

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 May 3, 2017, the UFW filed a request for judicial notice of an ALRB ALJ's decision in unfair labor practice case no. 2013-CE-041-VIS. Gerawan filed an opposition to that request on May 9.

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

Summary: Gerawan's complaint for declaratory and injunctive relief alleges 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 Gerawan intervened in the case alleging similar constitutional access claims.

Status: The court heard the parties' cross-summary judgment motions on April 5. The matter is under submission, and the parties are awaiting the court's written ruling.

► ***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: On April 4, 2017, the court issued an order sustaining the Board's demurrer on jurisdictional grounds under Labor Code section 1164.5, without leave to amend. The

Board thereafter submitted a proposed order and judgment, which opposing counsel approved as to form. On April 19, the court entered the proposed order with the exception of the judgment, and directed counsel to stipulate to a judgment or file a motion for entry of judgment.

Other Board Litigation

► *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 Gerawan in an unfair labor practice proceeding. Gerawan appeals the superior court's judgment dismissing the case after sustaining a demurrer filed by the Board without leave to amend.

Status: Gerawan'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. The Board filed an opposition to that motion on March 28. On April 5, the court issued an order denying Gerawan's abeyance motion, but granting a 90-day extension of time for Gerawan to file an opening brief. Per the current briefing schedule, Gerawan's opening brief will be due July 5, and the Board's respondent's brief will be due October 3.

5. General Counsel's Report

General Counsel Montgomery reported that they have four new hires. Ms. Montgomery is interviewing for the vacant positions in Indio. Visalia personnel currently staff the Indio office. No new complaints have issued. Several complaints will be issued within the next month or two. Monthly staff training continues. Several student interns have been hired. The outreach task force continues to meet regularly.

6. Chief of Administration's Report

Chief for the Division of Administrative Services Rodrigues visited the Salinas, Oxnard and Visalia ALRB offices. Ms. Rodrigues updated the Board on personnel activity since the last Board meeting including 4 appointments, 1 separation, 8 recruitments, 4 completed required reports and 6 upcoming required reports. Several projects are in process including review of onboarding and separation processes; Assembly and Senate budget hearings; relocation options and acquisition of additional space for various offices; preparation for fiscal year-end reporting; exploration of various information technology solutions; update of leave balance processes; and review of records retention procedures.

7. Regulations

Approval of Minutes of Vote re Proposed E-filing Regulations

The Board voted 3-0 to approve the minutes of their vote taken earlier during this meeting approving the amended proposed e-filing regulations.

Consolidation Regulation Approved by Office of Administrative Law

Board Counsel Heyck reported that on May 16, 2017, the Office of Administrative Law (OAL) approved the amendment of section 20335 to subdivision (c), in title 8 of the California Code of Regulations relating to procedures for consolidating certain challenges or objections with unfair labor practice complaints. The amendment becomes effective July 1, 2017.

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. Personnel – See General Counsel's and Chief of Administration's Reports above.

10. Announcements –

Members Hall and Rivera-Hernandez will be visiting with farmers and touring farms in the Oxnard area on May 23 and 25, 2017. Last month Members Hall and Rivera-Hernandez had an opportunity to visit the Coachella area. Member Hall expressed how honored he was having been welcomed by so many farmers throughout California. Member Hall was a keynote speaker at the California Agricultural Council of California's conference in Sacramento last week. Mr. Hall looks forward to continuing the work of the ALRB and fulfilling the obligation he made during his confirmation to visit farmers throughout the state.

The public meeting adjourned at 2:11 p.m.