

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 13, 2017

Time: 10:06 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Acting Executive Secretary Soble, Board Counsel Heyck, Inciardi and Ratshin; Special Counsel Blanco; Analysts Cooper and Massie
Others Present: ALRB: General Counsel Montgomery; Regional Director Schneider; Division of Administrative Services Staff Manager Crews; LWDA: General Counsel Woo-Sam

OPEN SESSION

1. Approval of Minutes: Board approved 3-0 the minutes of May 22, 2017.

2. Public Comment: None.

3. Chairwoman's Report:

The ALRB's 2017-2018 budget was approved. The Board had several limited-term positions and those positions will continue for the next two years. The budget can be found on the Department of Finance website. The Board is one-half position smaller this year, just in time for a large workload increase which will be reported by the Acting Executive Secretary. Board Counsel Ratshin has been promoted to Chief Board Counsel.

Eduardo Blanco provided the Board with an update concerning the Medicinal and Adult Use Cannabis Regulation and Safety Act (MAUCRSA) and its application to and impact on the Agricultural Labor Relations Act (ALRA) and the Board's regulations and procedures. The Cannabis law requires that applicants for a cultivation license must declare that they are agricultural employers under the ALRA. If the cultivator has 20 or more employees, they become subject to the Labor Peace Agreement which allows unions workplace access to the employees for purposes of worker education and organizing. Mr. Blanco advised the Board of his belief that the

cannabis law provisions requiring an affidavit coupled to the definition under the law of cultivation made clear that cannabis cultivators are agricultural employers as defined by our Act. Trimming of cannabis might raise jurisdictional issues because it may occur off the farm and not be done by the farmer. The labor peace agreement is believed by Mr. Blanco to create an exemption to the Board's existing union access provisions but that there were many questions left unanswered by the cannabis law as to the nature of the access and how it is to be conducted. Mr. Blanco also mentioned that the cannabis law also allows cultivators to form associations and that the association can be an employer. Mr. Blanco outlined his efforts at outreach to the cultivator community around the state and that future educational events are upcoming. He informed the Board of knowledge he has gained about cannabis cultivation, cultivators and their workforce demographics. From the unions he learned that they might begin election activity next summer 2018. He also advised the Board of his concerns about staff security, especially in the remote Northern California counties, and that the nature of cannabis grows can be very dangerous. He recommended a number of actions that the Board could take to address security with the California Highway Patrol and to provide appropriate staff direction in its manuals concerning the changes created by the cannabis law.

Mr. Blanco informed the Board that the California State Treasurer is looking at banking solutions for growers, and the Department of Consumer Affairs along with the California Department of Food and Agriculture are issuing regulations. The Board will track the regulations implemented by other departments. The United Food and Commercial Workers Union (UFCW), Teamsters and United Farm Workers have expressed interest in organizing. The UFCW has been organizing cannabis workers outside of California involving approximately 10,000 employees.

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

ELECTION REPORT

Since the Board's last meeting on May 22, 2017, there have been no new notices of intent to take access (NAs) and no new notices of intent to organize (NOs). From May 22, 2017 through July 12, 2017, there have not been any new election or decertification petitions.

COMPLAINT REPORT

Since the Board's last meeting, the General Counsel has issued fourteen new complaints.

- 1.) **Sun Pacific Farming Cooperative, Inc., 2015-CE-032-VIS**
Sun Pacific Farming is a large agricultural operation that grows citrus, grapes, kiwis, and tomatoes in Kern, Fresno and Tulare counties. In her June 30, 2017 complaint, the General Counsel alleges that Respondent committed unfair labor practices. On July 3, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on July 24, 2017, a prehearing conference on July 31, 2017, and a hearing to start on August 22, 2017.
- 2.) **P&M Vanderpoel Dairy, 2013-CE-016-VIS (40 ALRB No. 8)**
P&M Vanderpoel Dairy is located in Tipton, California. In her June 14, 2017 filing, the General Counsel seeks compliance with the Board's decision dated August 28, 2014. On June 26, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on July 10, 2017, a prehearing conference on August 7, 2017, and a hearing to start on September 6, 2017.
- 3.) **South County Packing, Inc., 2017-CE-017-SAL**
South County Packing owns several properties in Monterey County and along the Imperial Valley, where it grows crops such as spinach, bell peppers, cabbage, and lettuce. In her June 29, 2017 complaint, the General Counsel alleges that Respondent committed unfair labor practices. On July 6, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on July 31, 2017, a prehearing conference on August 21, 2017, and a hearing to start on September 12, 2017.
- 4.) **Gerawan Farming, Inc., 2015-CE-014-VIS**
During the pertinent time period, Gerawan was the largest tree fruit grower in California and harvested peaches, nectarines, plums, apricots, table grapes and wine grapes. In her June 30, 2017 complaint, the General Counsel alleges that Respondent committed unfair labor practices. On July 7, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on August 7, 2017, a prehearing conference on August 28, 2017, and a hearing to start on September 19, 2017.

- 5.) **California Artichoke and Vegetable Corporation dba Ocean Mist Farms, 2012-CE-044-VIS and 2013-CE-012-VIS (41 ALRB No. 2)**
During the pertinent time period, Ocean Mist was headquartered in the Castroville area near Salinas, but also had spinach fields in Coachella. In her May 25, 2017 filing, the General Counsel seeks compliance with the Board's decision dated April 7, 2015. On June 6, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on June 26, 2017, a prehearing conference on August 28, 2017, and a hearing to start on October 3, 2017.
- 6.) **Del Carlo Farms, Inc., 2016-CE-011-VIS**
Del Carlo's principal place of business is in San Joaquin County. Del Carlo is engaged in growing and harvesting tomatoes, cucumbers, almonds, olives, alfalfa and corn. In her June 23, 2017 complaint, the General Counsel alleges that Respondent committed unfair labor practices. On June 26, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on July 17, 2017, a prehearing conference on September 11, 2017, and a hearing to start on October 17, 2017.
- 7.) **Growers Express, LLC, 2016-CE-035-SAL**
Headquartered in Salinas Valley, Growers Express also has a ranch in King City where the alleged incidents occurred. The Respondent grows vegetables, including iceberg lettuce, romaine hearts, Brussels sprouts, cauliflower, broccoli, green onions, celery and herbs. In her June 28, 2017 complaint, the General Counsel alleges that Respondent committed unfair labor practices. On June 29, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on July 31, 2017, a prehearing conference on September 25, 2017, and a hearing to start on October 24, 2017.
- 8.) **Scoto Brothers Farming, 2016-CE-015-VIS**
Scoto Brothers Farming's principal place of business is in Merced County and they grow and harvest tomatoes. In her June 30, 2017 complaint, the General Counsel alleges that Respondent committed unfair labor practices. On July 10, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on August 14, 2017, a prehearing conference on October 9, 2017, and a hearing to start on November 1, 2017.

- 9.) **Rawah Vineyards, LLC, 2016-CE-045-SAL**
Rawah Vineyards grows and harvests grapes in Napa and Sonoma Counties. On June 30, 2017, the General Counsel served a complaint alleging that Respondent committed unfair labor practices. On July 11, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on August 21, 2017, a prehearing conference on October 2, 2017, and a hearing to start on November 14, 2017.
- 10.) **San Miguel Produce, Inc., Herb Farm, LLC, and Del Sol Harvesting, Inc., 2015-CE-044-SAL, 2015-CE-045-SAL, 2015-CE-046-SAL, 2015-CE-047-SAL, 2015-CE-048-SAL, 2015-CE-049-SAL**
San Miguel Produce and Herb Farm both grow and harvest herbs in Oxnard and Fillmore. During the pertinent time period, Del Sol Harvesting was a farm labor contractor supplying agricultural workers to the other two entities. On June 20, 2017, the General Counsel served a complaint alleging that Respondent committed unfair labor practices. On June 27, 2017, the Executive Secretary's Office issued a Notice of Hearing setting a case management conference on July 24, 2017, a prehearing conference on October 30, 2017, and a hearing to start on December 5, 2017.
- 11.) **Gerawan Farming, Inc., 2015-CE-023-VIS, 2014-CE-015-VIS, 2014-CE-021-VIS, 2014-CE-025-VIS**
During the pertinent time period, Gerawan was the largest tree fruit grower in California and harvested peaches, nectarines, plums, apricots, table grapes and wine grapes. In her June 29, 2017 consolidated complaint, the General Counsel alleges that Respondent committed unfair labor practices. The Executive Secretary's Office will be shortly issuing a Notice of Hearing to schedule a case management conference, prehearing conference, and hearing.
- 12.) **Farmland Management Services, 2015-CE-005-VIS**
Farmland Management Services, formerly known as Rancho Buenaventura, grows and harvests walnuts in Shasta County. In her June 29, 2017 consolidated complaint, the General Counsel alleges that Respondent committed unfair labor practices. The Executive Secretary's Office will be shortly issuing a Notice of Hearing to schedule a case management conference, prehearing conference, and hearing.

- 13.) **Gerawan Farming, Inc., 2013-CE-011-VIS, 2014-CE-023-VIS, 2014-CE-024-VIS, 2015-CE-003-VIS, 2015-CE-022-VIS, 2015-CE-024-VIS**

During the pertinent time period, Gerawan was the largest tree fruit grower in California and harvested peaches, nectarines, plums, apricots, table grapes and wine grapes. In her June 29, 2017 consolidated complaint, the General Counsel alleges that Respondent committed unfair labor practices. The Executive Secretary's Office will be shortly issuing a Notice of Hearing to schedule a case management conference, prehearing conference, and hearing.

- 14.) **Jacobo D. Farms, 2015-CE-027-VIS**

Jacobo Farms grows and harvests peaches in Fresno County. In her June 30, 2017 consolidated complaint, the General Counsel alleges that Respondent committed unfair labor practices. The Executive Secretary's Office will be shortly issuing a Notice of Hearing to schedule a case management conference, prehearing conference, and hearing.

HEARINGS SCHEDULED

As noted, ten hearings have recently been calendared, including one in August, three in September, three in October, two in November, and one in December. When the next four Notices of Hearing issue, we anticipate calendaring a second hearing in December, two hearings in January, and one hearing in February.

COMPLAINTS SETTLED PRIOR TO HEARING

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

On June 27, 2017, the parties executed an Informal Bilateral Settlement Agreement and the scheduled hearing has been taken off calendar.

COMPLAINTS WITHDRAWN

None.

HEARINGS IN PROGRESS

None.

HEARINGS HELD

None.

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

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

None.

CASES PENDING BOARD DECISION OR ACTION

None.

CASES REFERRED TO COMPLIANCE

- **P&M Vanderpoel Dairy, 2013-CE-016-VIS, 40 ALRB No. 8**
On July 12, 2017, the General Counsel submitted a request to the Board for consideration of a Formal Bilateral Partial Settlement Agreement. The agreement covers providing backpay to four of the five involved agricultural workers. A hearing is calendared for September 6, 2017 that would address the backpay for the fifth worker.

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

ADMINISTRATIVE ORDERS

- **Arnaudo Brothers LP, 2013-CE-028-VIS, 41 ALRB No. 4**
On June 2, 2017, the Board issued Administrative Order 2017-04 approving a formal settlement agreement.
- **H & R Gunlund Ranches, 2009-CE-063-VIS, 39 ALRB No. 21**
On June 2, 2017, the Board issued Administrative Order 2017-05 approving a formal settlement agreement.

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 on May 8, 2017, and will be submitting closing briefs to the mediator on July 20, 2017.

E-FILING

The Board now has e-filing available as an option for parties and counsel to file documents with the Board. Multiple counsel have already taken advantage of the e-filing option.

HIRING OF ADMINISTRATIVE LAW JUDGE

Mary Cracraft has been hired as a new administrative law judge. Ms. Cracraft has over twenty-two years of experience as an administrative law judge with the National Labor Relations Board (“NLRB”). She also has five years of experience as a presidential appointee to the NLRB itself. Mary will be starting in the ALJ Unit next Monday.

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ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

- ▶ ***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 and employer filed separate opposition briefs on June 15. On July 10, petitioner filed a stipulated request for an extension of time to August 21 to file a reply, which the court granted that same day.

- ▶ ***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 and employer filed separate opposition briefs on June 15. On July 10, petitioner filed a stipulated request for an extension of time to August 21 to file a reply, which the court granted that same day.

► ***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: The court heard oral argument from the parties on Wednesday, June 21, at 9:00 a.m., after which the court took the matter under submission. The matter remains under submission at this time and the parties are awaiting issuance of the court's opinion.

Mandatory Mediation and Conciliation Litigation

► ***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: On June 26, 2017, the court issued a ruling granting the Board's summary judgment motions against Gerawan and Lupe Garcia and denying Gerawan's and Garcia's cross-summary judgment motions. On July 5, 2017, the Board submitted to the court a proposed judgment, and the parties now are awaiting entry of judgment by the court.

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: Briefing was complete as of March 20, 2017. On June 16, the court issued a notice to the parties advising it was considering setting this case for oral argument on its October 2017 calendar.

► ***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: On June 26, 2017, the Board filed a motion to dismiss the appeal as moot based on the dismissal of the underlying unfair labor practice charges from which this litigation arises. On June 30, the court granted Gerawan's request for an extension of time to file its opening brief from July 5 to July 24. On July 6, the court granted Gerawan's request for an extension of time also to July 24 to file its opposition to the Board's motion to dismiss.

► ***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 employer later set a hearing on its motion for August 4, but on June 14 the court entered an order advancing the hearing to July 28, 2017, at 10:00 a.m. hearing is scheduled for August 4, 2017. The Board's opposition is due July 17, 2017, and the employer's reply filings will be due July 21.

5. General Counsel's Report

General Counsel Montgomery reported the regions have been busy issuing complaints and complying with timelines for investigations. Seventy-eight charges were filed in the last fiscal year. Work continues on clearing the remaining backlog. The Santa Rosa office is now fully staffed. Ms. Montgomery is working on filing remaining vacancies. Judge Soble shared tips on scheduling and conducting hearings at the last training session. Additional training sessions are being scheduled. More complaints will be issued before the end of year. There is a need to balance resources between investigations and hearings. Compliance remains a top priority for the program.

6. Chief of Administration's Report

Chief for the Division of Administrative Services Rodrigues filed her report with the Board on July 6, 2017. Division of Administrative Services Staff Manager Crews thanked the Board for the opportunity to serve the department.

7. Regulations

The Board's E-filing regulation became effective May 23, 2017, and the consolidation regulation became 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 – The job announcement for the vacant Board Counsel position will be posted next week.

10. Announcements

Chairwoman Shiroma will attend the Association of Labor Relations Agencies' 2017 Conference in late July.

Members Hall and Rivera-Hernandez attended a presentation provided by a vegetable and seed research operation in Yolo County.

The public meeting adjourned at 11:12 a.m.