

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

April 25, 2018

Time: 1:07 p.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Executive Secretary Avila-Gomez; Chief Board Counsel Ratshin;
Board Counsel Inciardi and Coffey; Analyst Massie
Others Present: ALRB: General Counsel Montgomery; Division of Administrative
Services Chief Rodrigues

OPEN SESSION

1. **Approval of Minutes:** Board approved 3-0 the minutes of February 28, 2018
2. **Public Comment:** None at this time.
3. **Chairwoman's Report:**

The annual Agricultural Labor Conference was held on April 13, 2018, at the UC Davis Law School and was sold out weeks in advance. The conference examined labor-related issues in California and US agriculture. Labor-intensive fruit and vegetable crops are almost 85 percent of California and 40 percent of US crop sales, farm worker employment has been increasing, and the state's mostly unauthorized farm workers are aging and settling in one place with families that include US-born children.

Four timely issues were discussed. First was the re-negotiation of the NAFTA agreement that lowered barriers to trade and investment between Canada, Mexico, and the US. Second was the rapid growth in the H-2A program, which certified 200,000 jobs to be filled by guest workers in 2017, including 15,000 in California. Third were the effects of changing immigration policies on agriculture, farm workers, and agricultural communities. Fourth was an update on ALRB activities and court

decisions that affect mandatory mediation and conciliation and union certified until decertified.

On the ALRB panel, Chairwoman Shiroma was joined by Board Member Cathryn Rivera-Hernandez, General Counsel Julia Montgomery, Special Advisor Eduardo Blanco, and retired Chief Administrative Law Judge Thomas Sobel. Ms. Shiroma provided a past is prologue introduction for the ALRB panel insofar as the continuing quest to define the success of the Act, the differing views on whether the department should be judged on the number of elections, contracts achieved, monies garnered as remedies for farmworkers, Board decisions upheld, the Supreme Court rulings passed down through the years, or all of the above. General Counsel Montgomery provided current successes in the General Counsel's office; Special Advisor Blanco provided a cannabis update; Retired Chief ALJ Sobel spoke to the recent Supreme Court rulings in *Gerawan* and *Tri-Fanucchi*; and Member Rivera-Hernandez shared her experience on Mandatory Mediation and Conciliation first in the Governor Gray Davis "horse shoe" negotiating the legislation and then on the Board implementing the new statute. The conference provided excellent insights and was well received. Planning has begun on next year's event.

On April 23, 2018, Chief Board Counsel Ratshin, accompanied to the hearing by Co-Counsel Senior Board Counsel Heyck, presented oral argument in *Gerawan Farming, Inc. v. ALRB*, Case No. F073720, the decertification election unfair labor practice case. The Board expressed their appreciation for Mr. Ratshin's representation of the Board.

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

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Since the Board's last meeting on February 28, 2018, there have been two Notices of Intent to Take Access filed at cannabis industry employers.

The first notice was filed on March 7, 2018, by the United Food & Commercial Workers Union, Local 5 (UFCW5) at Emerald SKYWAY in Salinas, CA.

Case Name: Emerald SKYWAY
Case Number: 2018-NA-009-SAL
Charging Party: United Food & Commercial Workers Union, Local 5 (UFCW5)

The second notice was filed on April 19, 2018, by the United Food & Commercial Workers Union, Local 5 (UFCW5) at Greenfield Organix in Greenfield, CA.

Case Name: Greenfield Organix
Case Number: 2018-NA-011-SAL
Charging Party: United Food & Commercial Workers Union, Local 5 (UFCW5)

NOTICE OF INTENT TO ORGANIZE (NO)

Since the Board's last meeting on February 28, 2018, there has been one Notice of Intent to Organize filed at a cannabis industry employer.

The notice was filed on April 19, 2018, by the United Food & Commercial Workers Union, Local 5 (UFCW5), to organize the employees of Greenfield Organix in Greenfield, CA.

Case Name: Greenfield Organix
Case Number: 2018-N0-002-SAL
Charging Party: United Food & Commercial Workers Union, Local 5 (UFCW5)

ELECTION PETITIONS FILED

Since the Board's last meeting on February 28, 2018, there have been no elections held.

COMPLAINT REPORT

Since the Board's last meeting on February 28, 2018, there have been two complaints issued.

- 2016-CE-037-SAL, Channel Island Berry Farms, filed 3/13/18. Channel Island Berry Farms is an agricultural operation that grows and harvest Strawberries in Oxnard, California. The employer committed an unfair Labor practice by terminating an employee for having engaged in protected concerted activity.

- 2017-CE-069-SAL, Premier Raspberries, filed 3/30/18. Premier Raspberries is a corporation that grows, harvest and packs raspberries and blackberries in Santa Cruz County.

HEARINGS SCHEDULED

Since the Board's last meeting on February 28, 2018, through April 25, 2018, there were 25 hearings scheduled, as follows:

CASE MANAGEMENT CONFERENCES

- Monday, March 5, 2018 @ 1:30 p.m. – Case Management Conference in Sabor Farms, Case No. 2013-CE-047-SAL (42 ALRB No. 2).
- Monday, March 5, 2018 @ 3:00 p.m. – Case Management Conference in Premiere Raspberries, LLC, Case No. 2017-CE-034-SAL, et al.
- Monday, March 12, 2018 @ 1:30 p.m. – Case Management Conference in D'Arrigo Brothers Co. of California, Case No. 2016-CE-022-SAL, et al.
- Monday, March 12, 2018 @ 3:00 p.m. – Case Management Conference in Gerawan Farming, Inc., Case No. 2015-CE-007-VIS, et al.
- Monday, March 19, 2018 @ 1:30 p.m. – Case Management Conference in David Abreu Vineyard, Case No. 2017-CE-026-SAL.
- Monday, March 26, 2018 @ 1:30 p.m. – Case Management Conference in Jacob Diepersloot, et al., Case No. 2015-CE-027-VIS.
- Monday, April 2, 2018 @ 3:00 p.m. – Case Management Conference in Premiere Raspberries, LLC, 2018-CE-004-SAL.
- Wednesday, April 4, 2018 @ 1:30 p.m. – Case Management Conference in George Amaral Ranches, Inc., 2017-CE-021-SAL.
- Thursday, April 5, 2018 @ 3:00 p.m. – Case Management Conference in D'Arrigo Bros. of California, 2016-CE-022-SAL, et al.
- Monday, March 13, 2018 @ 11:00 a.m. – Case Management Conference in Golden West Veg., Inc., Case No. 2016-CE-028-SAL
- Tuesday, March 13, 2018 @ 1:30 p.m. – Case Management Conference in West Coast Berry, Case No. 2016-CE-002-SAL

PREHEARING CONFERENCES

- Monday, March 12, 2018 – Settlement Conference in Monterrey Mushrooms, Inc., Case No. 2016-CE-032-SAL
- Monday, March 12, 2018 @ 1:30 p.m. – Prehearing Conference in Fowler Packing Company, Inc., Case No. 2016-CE-003-VIS
- Monday, March 19, 2018 @ 1:30 p.m. – Prehearing Conference in Sabor Farms, Case No. 2013-CE-047-SAL (42 ALRB No. 2).
- Monday, April 2, 2018 @ 1:30 p.m. – Prehearing Conference in Gerawan Farming, Inc., Case No. 2015-CE-007-VIS, et al.

- Tuesday, April 10, 2018- Prehearing Conference in Fowler Packing Company, Inc., Case No. 2016-CE-003-VIS
- Monday, April 16, 2018 @ 1:30 p.m. – Prehearing Conference in Gerawan Farming, Inc., Case No. 2015-CE-007-VIS, et al.

SETTLEMENT CONFERENCES

- Monday, March 5, 2018 @ 3:00 p.m. – Settlement Conference in Monterey Mushrooms, Inc., Case No. 2016-CE-032-SAL
- Wednesday, March 14, 2018 – Settlement Conferences on Sabor Farms, Case No. 2013-CE-047-SAL
- Tuesday, March 20, 2018 @ 1:30 p.m. – Settlement Conference in Lagomarsino Group, Case No. 2017-CE-009-VIS.
- Friday, March 23, 2018 – Settlement Conference in Lagomarsino Group, Case No. 2017-CE-009-VIS
- Monday, March 26, 2018 @ 4:00 p.m. – Settlement Conference in Monterey Mushrooms, Inc., Case No. 2016-CE-032-SAL.
- Wednesday, March 28, 2018 – Settlement Conference in Monterey Mushrooms, Inc., Case No. 2016-CE-032-SAL

HEARINGS

- Tuesday, March 6, 2018 – Hearing in Gerawan Farming, Inc., Case No. 2013-CE-011-VIS, et al.
- Monday, April 16, 2018 – Hearing in Fowler Packing Company, Inc., Case No. 2016-CE-003-VIS

COMPLAINTS SETTLED

- Lagomarsino Group, 2017-CE-030-SAL: The parties reached an Informal Bilateral Settlement Agreement. General Counsel requested the matter be taken off calendar on April 4, 2018.
- Sabor Farms, 2013-CE-047-SAL: The parties reached a proposed Formal Bilateral Settlement Agreement. General Counsel requested the matter be taken off calendar on April 5, 2018.

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

ALJ/IHE DECISIONS ISSUED

- Arnaudo Brothers, LP, and Arnaudo Brothers, Inc., 2015-CE-006-VIS, 2017-CE-003-VIS

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

None.

CASES PENDING BOARD DECISION OR ACTION

- United Farm Workers (Olvera/Magaña), 2013-CL-002-SAL
- United Farm Workers (Lopez), 2015-CL-006-VIS
- Arnaudo Brothers, LP, and Arnaudo Brothers, Inc., 2015-CE-006-VIS, 2017-CE-003-VIS
- Sabor Farms, 2013-CE-047-SAL

BOARD DECISIONS ISSUED

- P & M Vanderpoel Dairy, 2013-CE-016-VIS (40 ALRB No. 8) 44 ALRB No. 4; Board decision issued April 20, 2018.

ADMINISTRATIVE ORDERS

- Kawahara Nurseries, Inc., 2011-CE-004-SAL, 2011-CE-005-SAL, 2011-CE-006-SAL (40 ALRB No. 11), Admin. Order 2018-03: On April 2, 2018, the Board issued an Order Approving Formal Bilateral Settlement Agreement.

CASE ON CALENDAR FOR FUTURE DATES

1. Channel Island Berry Farms, Inc., 2016-CE-037-SAL
2. Jacob Diepersloot, individual and dba JD Farms, Jacob D. Farms; JD Farms Management, Inc., 2015-CE-027-VIS
3. Golden West Veg., Inc., 2016-CE--028-SAL
4. West Coast Berry Farms, LLC, 2016-CE-002-SAL
5. David Abreu Vineyard Management, Inc., 2017-CE-024-SAL
6. Premiere Raspberries, LLC, 2017-CE-069-SAL

ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

- ▶ ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F077033***

Summary: Petition for writ of review of the Board's decision in 44 ALRB No. 1, in which the Board found that Gerawan committed unfair labor practices by engaging in surface bargaining with the United Farm Workers of America and by insisting on the exclusion of workers employed by farm labor contractors from the terms of a collective bargaining agreement.

Status: Gerawan filed its petition for writ of review on February 21, 2018. The Board filed the certified record on April 19. Gerawan's opening brief is due May 24. The Board's respondent's brief will be due 35 days thereafter (June

28), and any reply will be due 25 days after the respondent's brief is filed (July 23).

► ***Tri-Fanucchi Farms v. ALRB*, U.S. Supreme Court, Case No. 17-1220**

Summary: Petition for writ of certiorari seeking review of the California Supreme Court's opinion upholding the Board's rejection of the employer's union "abandonment" defense, and reversing the portion of the appellate court's opinion reversing the Board's remedial bargaining make-whole award.

Status: The employer filed its petition for writ of certiorari on February 26. On March 5, the Board filed a form waiving its response. The Court denied the petition on April 2.

► ***Tri-Fanucchi Farms v. ALRB*, Fifth District Court of Appeal, Case No. F069418**

Summary: On remand to the Fifth Appellate District after the California Supreme Court affirmed in part and reversed in part the appellate court's prior opinion. The California Supreme Court issued its opinion on November 27, 2017, affirming the portion of the appellate court's opinion upholding the Board's rejection of the employer's union "abandonment" defense, and reversing the portion of the appellate court's opinion reversing the Board's remedial bargaining make-whole award.

Status: On March 14, the court issued an order dismissing the case and issued its remittitur the same day. On April 18, the Board filed a memorandum of costs as the prevailing party. The UFW also filed a memorandum of costs on April 23.

► ***Gerawan Farming, Inc. v. ALRB, et al.*, 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 found Gerawan committed unfair labor practices, dismissed a decertification petition, and set aside a decertification election.

Status: On March 6, the court issued an order requesting supplemental briefing on two issues relating to the Board's order dismissing the decertification petition and setting aside the election. On March 12, the court issued its order setting oral argument for Monday, April 23, 2018, at 1:30 p.m. All parties filed supplemental briefs on April 6 in response to the Court's prior order. Oral arguments were held on April 23, and the matter was submitted. The parties now are awaiting issuance of an opinion.

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

Summary: Transferred to the Fifth Appellate District after the California Supreme Court granted the Board's petition for review, with instructions to vacate the appellate court's prior opinion and to reconsider the case in light of *Tri-Fanucchi Farms v. ALRB* (2017) 3 Cal.5th 1161.

Status: On March 14, 2018, the California Supreme Court issued an order transferring the matter to the Fifth Appellate District with instructions to vacate its prior opinion and reconsider the case in light of *Tri-Fanucchi Farms*. The Board and Arnaudo each filed supplemental briefs on March 29, and replies on April 13. The UFW also filed a reply to Arnaudo's supplemental brief on April 13. On April 19, the court issued an order stating it believed it could decide the matter on the papers without further argument, but that if any party requested argument it would be scheduled for the June calendar. All parties filed forms waiving oral argument.

Mandatory Mediation and Conciliation Litigation

► ***Gerawan Farming, Inc. v. ALRB, United States Supreme Court, Case No. 17-1375***

Summary: Petition for writ of certiorari seeking review of the California Supreme Court's opinion in *Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118. The California Supreme Court issued its opinion on November 27, 2017, reversing the appellate court's opinion and concluding that the MMC statute does not violate substantive due process, equal protection, or constitute an unconstitutional delegation of legislative power.

Status: Gerawan filed a petition for writ of certiorari on March 28. The ALRB and UFW each waived their rights to respond in separate filings on April 3. On April 16, the Court requested responses to the petition, which currently are scheduled as due May 16.

► ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F068526***

Summary: On remand to the Fifth Appellate District after the California Supreme Court issued an opinion reversing the appellate court's prior opinion. The California Supreme Court issued its opinion on November 27, 2017, reversing the appellate court's opinion and concluding that the MMC statute does not violate substantive due process, equal protection, or constitute an unconstitutional delegation of legislative power. The Court also found that an

employer cannot assert a defense of union “abandonment” in resisting a referral to MMC.

Status: On March 15, the court issued an order advising oral argument will be scheduled in October 2018 on the issues remaining unresolved following the California Supreme Court’s opinion.

► ***Gerawan Farming, Inc. v. ALRB, et al., Fifth District Court of Appeal, Case No. F076148***

Summary: Appeal from superior court order granting summary judgment in favor of the Board after rejecting Gerawan’s claims that the Board’s decision in 39 ALRB No. 13 denying Garcia’s petition to intervene in MMC proceedings between Gerawan and the United Farm Workers of America unconstitutionally denies public access to MMC proceedings.

Status: The Board filed a respondents’ brief on March 22. Gerawan and Garcia filed a joint reply brief on April 12. The case now is fully briefed.

► ***Premiere Raspberries, LLC v. ALRB, Monterey County Superior Court, Case No. 18CV001447***

Summary: Petition for writ of mandate seeking to stay and enjoin mandatory mediation and conciliation proceedings between the employer and United Farm Workers of America while the employer seeks review of the union’s certification via a technical refusal to bargain.

Status: The employer filed a petition for writ of mandate and complaint for declaratory and injunctive relief on April 24, 2018. The employer also filed an ex parte application to stay or enjoin mandatory mediation and conciliation proceedings. The ex parte application is scheduled to be heard April 26, 2018. The Board’s responsive pleading to the petition is due May 24.

5. General Counsel’s Report

General Counsel Montgomery congratulated Chief Board Counsel Ratshin and Senior Board Counsel Heyck in their representation of the department in the court of appeal.

Settlements: Ms. Montgomery reported settlements were reached in two cases post Board decision: (1) *Sabor Farms*, 2013-CE-047-SAL (42 ALRB No. 2)—The settlement in the amount of \$7,900 involved 2 workers plus the

usual notice and posting remedies; and (2) *Kawahara Nurseries, Inc.*, 2011-CE-004-SAL, et al. (40 ALRB No. 11)—The settlement in the amount of \$348,000 involved 13 workers who were fired in retaliation for involvement in a union organizing campaign, and \$7,183 in backpay for two workers who after repeatedly asking for tax forms were fired, rehired, and pressured to withdraw their charges.

Outreach: The Santa Rosa staff, which is short one person as the Santa Rosa attorney transferred to the Oxnard office, conducted outreach at a CRLA Board meeting on March 9, attended a Latino service provider event on March 22, and participated in a Univision interview on March 22. The Oxnard staff conducted an outreach presentation at the Mixteco/Indígena Community Organizing Project (MICOP) and an Indigenous worker event. The Indio office conducted outreach in the Coachella Valley by leafletting workers at border crossings, contacting local service providers, and attending a local farmworker appreciation dinner. Upcoming outreach includes a public service announcement regarding settlement money to be distributed and renewing a contract with Radio Bilingüe. Last year the department was able to reach farmworkers in multiple regions by radio advertising. The plan is to increase the number of areas covered this year.

Training: Monthly training of the General Counsel staff continues. The next training involves how to investigate sexual harassment claims and working with victims. All staff are being offered various trainings to increase their skillset. Member Rivera-Hernandez offered to participate with counsel and Judge Soble on how to present a case before the ALRB.

Staffing: The General Counsel hired a Field Examiner for Visalia and a Staff Services Analyst who speaks Punjabi for Sacramento. Heidi Webb and Dulce Alonso left last month. Ms. Montgomery is currently looking for an attorney in both Visalia and Santa Rosa, a Field Examiner in Visalia, and an Office Technician/Senior Legal Typist in Salinas. The General Counsel will be posting an announcement for a field examiner to conduct statewide outreach who is able to speak an Indigenous language as well as Spanish. The person will be the main liaison between the ALRB and the farming community. The position will be headquartered in either Visalia or Salinas.

6. Chief of Administrative Services

Chief for the Division of Administrative Services Rodrigues submitted her written report prior to the meeting. She reported all vacancies and been filled in her unit and service levels will begin to improve within the next 6-9 months as the new employees become familiar their jobs. There are no significant new projects.

Year-end procedures and processes are underway. Before moving forward on new projects, Ms. Rodrigues wants to make more progress on existing projects.

Regarding facilities, Ms. Rodrigues reported she has visited all ALRB offices except Indio. She informed Department of General Services (DGS) of the Board's vote on the Visalia relocation and they have not highlighted any concerns. Ms. Rodrigues met with the Salinas Regional Director and walked through the lease extension with the addition of 900 square feet. The Oxnard CRUISE is on hold while staff temporarily relocates. New furniture has arrived in Oxnard and Ms. Rodrigues will be overseeing the inventory and set up the temporary offices. Once a date is set to move the IT, the office will be down perhaps one-half day. We are currently on task to be out of the current space by July 1 or soon after. Once the temporary move is complete, the CRUISE will be reinstated.

Ms. Rodriguez has begun the CalHR Equal Employment Opportunity (EEO) training.

7. Regulations – No changes since last meeting.

8. Legislation

▶ **Assembly Bill No. 2751 [Stone (D)]**

Summary: This bill would require the Agricultural Labor Relations Board to complete an expedited study by January 31, 2019, providing recommendations to eliminate delays and expedite the implementation of collective bargaining agreements, and to implement regulations incorporating such recommendations by June 1, 2019.

Status: Amended March 22, 2018; heard in Assembly Labor and Employment Committee on April 18; passed and re-referred to Committee on Appropriations.

▶ **Assembly Bill No. 3092 [Patterson (R)]**

Summary: This bill would amend Labor Code section 1154 of the Agricultural Labor Relations Act regarding labor organization unfair labor practices to state that a labor organization shall not abandon or fail to represent a bargaining unit for a period of three years or more. It additionally would require the Board decertify a labor organization that violates this provision.

Status: Heard in Assembly Labor and Employment Committee on April 18; failed passage.

► **Assembly Bill No. 3093 [Patterson (R)]**

Summary: This bill would add Labor Code section 1164.1 of the Agricultural Labor Relations Act to provide that a final Board order setting the terms of a collective bargaining agreement between an employer and certified labor organization following mandatory mediation and conciliation shall not take or be enforceable until it is approved by a majority of the agricultural employees of the bargaining unit affected by the order.

Status: Heard in Assembly Labor and Employment Committee on April 18; failed passage.

► **Assembly Bill No. 3094 [Patterson (R)]**

Summary: This bill would amend subdivision (f) of Labor Code section 1156.3, which currently provides that the Board shall certify a labor organization as the exclusive bargaining representative of a bargaining unit if the Board refuses to certify election results based on employer misconduct that would render slight the chance of a new election reflecting the free and fair choice of the employees. This bill would instead require the Board to order a new election where misconduct affected the results of a prior election, except that if misconduct by an employer or labor organization is found to be so egregious that a new election reflecting the free and fair choice of the employees is not possible then the election results shall be certified against the party that engaged in such misconduct, subject to appellate review.

Status: Heard in Assembly Labor and Employment Committee on April 18; failed passage.

9. Personnel

Associate Governmental Program Analyst Diaz left the Board at the end of March. Legal Secretary Caroline Molumby joined the Executive Secretary staff at the beginning of April. It is anticipated the vacant Hearing Officer position will be filled in May.

10. Announcements

The Board recognized Administrative Assistant Day and thanked each member of their administrative staff for their service. Member Rivera-Hernandez expressed her appreciation to Governor Brown for her reappointment.

The public meeting adjourned at 1:55 p.m.