

Agricultural Labor Relations Board

Report to the Legislature and to the Governor



Fiscal Year 2015-2016

Members of the Board

William B. Gould IV, Chairman¹

Genevieve A. Shiroma²

Cathryn Rivera-Hernandez

Isadore Hall III³

J. Antonio Barbosa, Executive Secretary⁴

Santiago Avila-Gomez, Executive Secretary⁵

Mark Woo-Sam, Acting General Counsel⁶

Julia L. Montgomery, General Counsel⁷

Date Submitted: December 21, 2018

¹ William B. Gould IV separated on February 22, 2017.

² Genevieve Shiroma was reappointed to the Board on January 7, 2016, and was designated Chairwoman on January 13, 2017.

³ Isadore Hall III was appointed on January 13, 2017.

⁴ On August 1, 2017, J. Antonio Barbosa announced he would be out on leave until his retirement from the ALRB on October 1, 2017.

⁵ Santiago Avila-Gomez was appointed to Executive Secretary on August 1, 2017.

⁶ Mark Woo-Sam served as Acting General Counsel from July 1, 2015, through April 3, 2016.

⁷ Julia L. Montgomery has served as General Counsel from April 4, 2016, to the present.

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I. Introduction

More than forty years ago, the Legislature enacted the Agricultural Labor Relations Act (Act or ALRA), a law granting certain rights to California farmworkers in order to “...ensure peace in the agricultural fields by guaranteeing justice for all agricultural workers and stability in labor relations.” The Act’s purpose is simple: Guarantee farmworkers full freedom of choice, and prevent and redress unfair labor practices. A groundbreaking law, the essential Act continues to serve California with its unique vision of agricultural labor peace.

This report is submitted pursuant to Labor Code section 1143. The report covers activities for Fiscal Year 2015-2016, ending June 30, 2016. The Board issued five decisions and 20 administrative orders. As a result of legal challenges, the Board saw eight new legal filings in state and federal courts, and a continuation of 16 court cases. At the beginning of the 2015-2016 fiscal year, the General Counsel’s office had a total of 115 pending ULP charges. Throughout fiscal year 2015-2016, the General Counsel’s office received an additional 115 ULP charges filed for a total of 230 pending ULP charges. Of the 230 ULP charges, 22 charges were withdrawn, 39 charges were dismissed, 44 charges were settled, and 10 charges went to complaint. Monetary remedies to farmworkers in the amount of \$467,210.81 were received from 16 companies pursuant to settlement agreements or Board orders. Payments were ordered in 18 cases as a result of an Informal Settlement Agreement or Private Party Agreement in the amount of \$380,649.06. No funds were required to be distributed from the Agricultural Employees Relief Fund. In non-monetary remedies, a “notice posting” was completed at worksites for 20 different employers; a “notice reading” was conducted at 23 worksites involving 5,229 farmworkers; and a “notice mailing” was completed for 14 employers involving 8,789 farmworkers. Supervisor training was completed in 19 cases involving 229 supervisors. In election activity, the Board, through its regional offices, processed 52 notices to take access and conducted three elections. The ALRB also engaged in outreach activities to make the safeguards of the Act known to workers and employers alike.

In September 2015, the Board conducted a series of statewide informational hearings in key agricultural areas to gather information on whether the ALRB needs to take additional steps to ensure farmworkers are aware of their rights and protections under the Act against retaliation. In these hearings, the ALRB heard testimony that agricultural workers remain largely unaware of their labor rights because of a number of communication barriers. First, reaching employees directly offsite is difficult because of the long hours that agricultural employees work. Second, many workers are not literate in Spanish or English, and lack access to the internet because of the high cost of data plans and computers. Further, the ALRB heard testimony that agricultural workers were fearful about exercising their rights and that face-to-face communication is important to help them overcome these fears. While ALRB staff continued to attend farmworker education and outreach events, staff efforts

also continued at the direction of the Board on fashioning a proposed regulation to address the findings.

In 2016, for the first time, the ALRB devised timelines designed to foster efficient and expeditious handling of Unfair Labor Practice cases, including timelines for the Board itself. The Board also issued proposed rules which (1) foster and promote electronic processing of cases (Cal. Code Regs., tit. 8, § 20169); and (2) expedite proceedings where ULP cases are consolidated with election objections (Cal. Code Regs., tit. 8, § 20335, subd. (c)). All of these initiatives are designed to promote efficiency and to make ALRB procedures work more expeditiously.

This report reflects the hard work, commitment, and accomplishments of the staff, the General Counsel, and the members of the Agricultural Labor Relations Board (ALRB) in implementing the Act. The ALRB remains firm in its commitment to enforce the Act.

Genevieve A. Shiroma
Chairwoman, Agricultural Labor Relations Board

II. Election Activity

Farmworkers have the right to choose whether or not they want a union to represent them. Elections are held to allow farmworkers to select or terminate representation by a labor organization. The ALRB is the state department charged with administering and conducting all aspects of farmworker representation elections.

One of the important protections under the Act is that farmworkers have the right to be contacted at their workplace so that they may receive information about a prospective or existing union. The employer is required to give the union organizers “access,” namely, to allow the organizers onto its property to meet directly with the farmworkers.

During fiscal year 2015-2016, labor organizations filed 52 notices of intent to take access. A notice of intent to take access is commonly abbreviated as an “NA”.

List of Notices of Intent to Take Access:

| No. | Date Filed | Type of Filing | Labor Organization | Employer |
|------------|-------------------|-----------------------|---------------------------|--|
| 1. | 07//07/15 | NA | UFW | Valley Garlic, Inc. dba Sequoia Packing |
| 2. | 07/08/15 | NA | UFW | Aptos Berry Farms |
| 3. | 07/08/15 | NA | UFW | Reiter Berry Farms |
| 4. | 07/08/15 | NA | UFW | Fernandez Bros., Inc. |
| 5. | 07/08/15 | NA | UFW | Scurich Berry Farm |
| 6. | 07/09/15 | NA | UFW | Fowler Packing Co. |
| 7. | 07/09/15 | NA | UFW | Pappas & Co. |
| 8. | 07/09/15 | NA | UFW | Stamoules Produce Company |
| 9. | 07/09/15 | NA | UFW | Martinelli Vineyards |
| 10. | 07/10/15 | NA | UFW | John H. Kautz dba John Kautz Farms aka Diversified Farms |
| 11. | 07/10/15 | NA | UFW | Vino Farm, Inc. |
| 12. | 07/13/15 | NA | UFW | Sonoma Cutrer Vineyards |
| 13. | 07/13/15 | NA | UFW | Tanimura & Antle, Inc. |
| 14. | 07/16/15 | NA | UFW | Saticoy Berry Farms |
| 15. | 07/17/15 | NA | UFW | Ito Bros., Inc. |
| 16. | 07/21/15 | NA | UFW | Mandalay Berry Farms |
| 17. | 07/23/15 | NA | UFW | Marz Farms, Inc. |

| No. | Date Filed | Type of Filing | Labor Organization | Employer |
|------------|-------------------|-----------------------|---------------------------|------------------------------------|
| 18. | 07/23/15 | NA | UFW | Colorado Farms, LLC |
| 19. | 07/24/15 | NA | UFW | Camarillo Berry Farms |
| 20. | 07/27/15 | NA | UFW | Ortega Berry Farms |
| 21. | 07/30/15 | NA | UFW | Springfield Farms |
| 22. | 07/30/15 | NA | UFW | Dimare Fresh |
| 23. | 07/31/15 | NA | UFW | Live Oak Farms |
| 24. | 07/31/15 | NA | UFW | Stellar Distributing, Inc. |
| 25. | 08/03/15 | NA | UFW | Logoluso Farms, Inc. |
| 26. | 08/04/15 | NA | UFW | Specialty Crop Co. |
| 27. | 08/06/15 | NA | UFW | Harvest Moon Agricultural Services |
| 28. | 08/07/15 | NA | UFW | T.T. Miyasaka, Inc. |
| 29. | 08/10/15 | NA | UFW | Desert Best Farms |
| 30. | 08/17/15 | NA | UFW | Aptos Berry Farms |
| 31. | 08/17/15 | NA | UFW | Providence Farms, Inc. |
| 32. | 08/17/15 | NA | UFW | Merrill Farms, LLC |
| 33. | 08/20/15 | NA | UFW | PV Farming Operations, LLC |
| 34. | 08/20/15 | NA | UFW | Sunset Farming, Inc. |
| 35. | 08/20/15 | NA | UFW | Paraiso Organics, Inc. |
| 36. | 08/24/15 | NA | UFW | J. Marchini Farms |
| 37. | 08/25/15 | NA | UFW | Fernandez Brothers, Inc. |
| 38. | 09/08/15 | NA | UFW | Camarillo Berry Farms |
| 39. | 09/10/15 | NA | UFW | Rio Mesa Organics Farms |
| 40. | 09/10/15 | NA | UFW | Royal Oaks Farms. LLC |
| 41. | 09/10/15 | NA | UFW | Sakakihara Farms |
| 42. | 09/17/15 | NA | UFW | Elkhorn Berry Farms, LLC |
| 43. | 09/17/15 | NA | UFW | Elkhorn Berry Organic Farms, LLC |

| No. | Date Filed | Type of Filing | Labor Organization | Employer |
|------------|-------------------|-----------------------|---------------------------|--|
| 44. | 10/29/15 | NA | UFW | Cedar Point Nursery |
| 45. | 11/09/15 | NA | UFW | Tanimura & Antle, Inc. |
| 46. | 11/09/15 | NA | UFW | Dutra Farms dba Premiere Raspberries, LLC |
| 47. | 11/09/15 | NA | UFW | Harvest Moon Agricultural Services |
| 48. | 11/09/15 | NA | UFW | Larse Farms, Inc. |
| 49. | 11/09/15 | NA | UFW | T.T. Miyasaka, Inc. |
| 50. | 11/09/15 | NA | UFW | Providence Farms, LLC |
| 51. | 04/18/16 | NA | UFW | Hiji Bros., Inc. and Seaview Growers, Inc. |
| 52. | 05/18/16 | NA | UFW | Klein Management, Inc. |

When a labor organization files a notice of intent to organize, accompanied by confidential signature cards signed by at least 10 percent of the farmworkers, it may obtain a list of presently employed farmworkers and their home addresses. During fiscal year 2015-2016, labor organizations filed four notices of intent to organize. A notice of intent to organize is commonly abbreviated as an “NO”.

List of Notices of Intent to Organize:

| No. | Date Filed | Type of Filing | Labor Organization | Employer |
|------------|-------------------|-----------------------|---------------------------|----------------------------|
| 1. | 08/10/15 | NO | UFW | The Specialty Crop Co. |
| 2. | 08/17/15 | NO | UFW | Stellar Distributing, Inc. |
| 3. | 11/03/15 | NO | UFW | Cedar Point Nursery |
| 4. | 05/18/16 | NO | UFW | Klein Management, Inc. |

An election to determine whether a majority of employees in a bargaining unit support the certification of a labor organization as the exclusive representative of the employees in that bargaining unit is triggered by the filing of a petition. The petition for certification of representative (commonly referred to as an “RC” petition) is filed with the ALRB, along with proof of support from a majority of the currently employed workers in the bargaining unit. An employee, a group of employees or a labor organization, may file the RC petition. During fiscal year 2015-2016, one RC petition was filed with the ALRB.

List of Petition for Certification:

| No. | Date Filed | Type of Filing | Petitioner | Employer |
|------------|-------------------|-----------------------|-------------------|------------------------|
| 1. | 05/18/16 | RC | UFW | Klein Management, Inc. |

An election to determine whether a majority of employees in a bargaining unit support the decertification of a labor organization that is currently certified as the exclusive representative of the employees in that bargaining unit, and its replacement with either no union or with a different labor organization as the certified representative, is triggered by the filing of a petition. The petition for decertification of representative (commonly referred to as an “RD” petition) is filed with the ALRB, along with proof of support from the requisite percentage of workers in the bargaining unit. During fiscal year 2015-2016, three RD petitions were filed with the ALRB.

List of Petitions for Decertification of Representative:

| No. | Date Filed | Type of Filing | Petitioner | Labor Organization(s) | Employer |
|------------|-------------------|-----------------------|-------------------|---|--|
| 1. | 09/22/15 | RD | D. Morales | UFW - incumbent | Demetrio Papagni Fruit, DP Enterprises LP |
| 2. | 12/28/15 | RD | J. Flores | UFW - incumbent UFCW, Local 5 - intervenor | Mushroom Farms, Inc. |
| 3. | 04/14/16 | RD | O. Sanchez | UFCW, Local 5 - incumbent UFW - intervenor | Hiji Bros., Inc. and Seaview Growers, Inc. |

Following the filing of an RC or RD petition, the ALRB conducts an investigation to determine if the statutory prerequisites for holding an election have been met. Where these prerequisites are met, the ALRB is required to conduct an election within the time specified under the ALRA. During fiscal year 2015-2016, the ALRB conducted three elections.

List of Elections Conducted:

| No. | Election Date | Type of Filing | Labor Organization(s) | Employer |
|------------|----------------------|-----------------------|---|---|
| 1. | 01/04/16 | RD | UFW - incumbent UFCW, Local 5 - intervenor | Mushroom Farms, Inc. |
| 2. | 04/20/16 | RD | UFCW, Local 5 - incumbent UFW - intervenor | Hiji Bros., Inc. and Seaview Growers, Inc. |
| 3. | 05/21/16 | RC | UFW | Klein Ranch, Inc. |

Once the election is held and the votes are tallied, the period of time for filing objections to the election begins to run. In the absence of the timely filing of any objections, or upon the final resolution of any timely filed objections, the ALRB is required to certify the election results. If a labor organization prevailed in the election, a representative certification is issued, certifying that organization as the employees' exclusive bargaining representative. During fiscal year 2015-2016, the ALRB issued certifications for all three of the elections conducted.

List of Certifications Issued:

| No. | Certification Date | Type of Certification | Labor Organization | Employer |
|------------|---------------------------|------------------------------|---------------------------|---|
| 1. | 01/19/16 | Representative | UFCW, Local 5 | Mushroom Farms, Inc. |
| 2. | 04/29/16 | Representative | UFW | Hiji Bros., Inc. and Seaview Growers, Inc. |
| 3. | 05/31/16 | Representative | UFW | Klein Ranch, Inc. |

III. Decisions Issued by the Board

The Board hears a variety of different types of cases. The most common type of case is an unfair labor practice (“ULP”) case. ULP cases typically involve alleged violations of a farmworker’s rights under the Act by an employer or union, such as retaliation for engaging in the type of concerted activity protected under the Act, or allegations of bad faith bargaining between a union and employer. A critical Board function is hearing all challenges and objections related to a representation election. The Board may also hear appeals of rulings issued by mediators in mandatory mediation and conciliation proceedings and petitions seeking to clarify the scope of union representation.

The Board issued five decisions in fiscal year 2015-2016. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website (www.alrb.ca.gov)).

List of Board Decisions Issued:

| No. | Issuance Date | Board Decision Number | Case Name |
|------------|----------------------|------------------------------|--|
| 1. | 09/10/15 | 41 ALRB No. 5 | Ace Tomato Company, Inc., Delta Pre-Pack Co., and Kathleen Lagorio Janssen |
| 2. | 09/10/15 | 41 ALRB No. 6 | Arnaudo Brothers, LP and Arnaudo Brothers, Inc. |
| 3. | 12/15/15 | 41 ALRB No. 7 | Ace Tomato Company, Inc. |
| 4. | 04/15/16 | 42 ALRB No. 1 | Gerawan Farming, Inc. |
| 5. | 04/28/16 | 42 ALRB No. 2 | Sabor Farms |

Descriptions of Board Decisions Issued:

ACE TOMATO COMPANY, INC., DELTA PRE-PACK CO., and KATHLEEN LAGORIO JANSSEN (2015) 41 ALRB No. 5

Background

This case arose when Ace Tomato Company, Inc. (Respondent Ace) engaged in a technical refusal to bargain to test the certification of the United Farm Workers of America (UFW) as the collective bargaining representative of Respondent Ace’s agricultural employees. In 1994, the ALRB found Respondent Ace’s refusal to bargain violated the ALRA, and the Board ordered that bargaining makewhole be paid to the employees for the period during which Respondent Ace refused to bargain, June 14, 1993, through July 27, 1994. (*Ace Tomato Company, Inc.* (1994) 20 ALRB No. 7.) Ace’s petition to the 3rd District Court of

Appeal was summarily denied in 1995. The General Counsel issued a final revised makewhole specification on January 9, 2015. The methodology used to calculate the specification was based on a contract averaging approach developed by Dr. Philip Martin, a professor of agricultural economics at U.C. Davis. The total bargaining makewhole in the specification was an increase over the amount of wages that had been paid of 24.76 percent for 1993 and 27.15 percent for 1994. This resulted in a total of \$943,472 in makewhole principal, and interest in the amount of \$1,235,665 as calculated through January 30, 2015, to be distributed to approximately 2,554 workers.

Administrative Law Judge's Decision

The Administrative Law Judge (ALJ) rejected Respondent Ace's contention that the case should be dismissed due to agency bias, and also due to the lengthy delay in the issuance of a makewhole specification, finding that the Board had previously ruled against this laches defense in an administrative order. With respect to the size of the makewhole class, the ALJ found the number of workers included in the specification had been overstated, reducing the number of workers entitled to distributions to 1,825. However, under the ALJ's decision, persons not included on the list of those entitled to makewhole would be allowed to establish a right to makewhole proceeds based on the production of documentary evidence establishing employment during the makewhole period. The ALJ upheld the General Counsel's contract averaging methodology, noting that it was reasonable and consistent with the Board's decision in *San Joaquin Tomato Growers, Inc.* (2012) 38 ALRB No. 4. But the ALJ found the General Counsel incorrectly calculated medical and pension benefits as a percentage of wages, rather than as a fixed hourly amount for each worker; and recommended eliminating paid vacations and miscellaneous fringe benefits as too speculative. Also, the ALJ recommended restricting holiday pay to only those employees who worked at least five days in the two weeks preceding the holiday, with eligibility to be determined on the basis of a review of payroll records. The ALJ determined the amount of makewhole owed per eligible employee equaled a 2.73 percent increase for wages paid during the makewhole period in 1993, a 5.12 percent increase for wages paid during the makewhole period in 1994, \$0.99 per hour worked for health plan contributions, \$0.11 per hour worked for pension plan contributions, and eight hours of holiday pay for each established holiday.

Finally, the ALJ dismissed derivative liability allegations against Kathleen Lagorio Janssen (Respondent Janssen), applying the fact specific test for derivative liability set forth in *Dole Food Company v. Patrickson* (2003) 538 U.S. 468, 475, and *White Oak Coal* (1995) 318 NLRB 732. The ALJ found no basis for derivative liability in that (1) there was no unity of interest between Respondent Ace and Respondent Janssen such that the separate personalities of the two no longer existed, and (2) adherence to the fiction of the separate existence of the corporation did not, under the facts presented, sanction fraud or promote injustice.

Board Decision

The Board, in its decision issued on September 10, 2015, upheld the ALJ's recommended decision and order, with some modifications. First, the Board ruled that Respondent Ace failed to show adequate prejudice to support its laches defense, noting that much of the delay resulted from Ace's own misconduct in destroying payroll records and refusing to provide requested records. Moreover, the Board reasoned that it would be unfair and contrary to controlling case law to punish innocent employees for delays caused by other parties or by the agency itself. The Board also found that Respondent Ace's claims of agency bias had no merit. The Board affirmed the ALJ's findings regarding the size of the makewhole class, and approved the procedure set out by the ALJ for allowing persons not listed as makewhole class members to establish their eligibility for makewhole. The Board approved the use of contract averaging, noting that the absence of any comparable contracts necessitated the use of this methodology, and concluded that the contract averaging method applied in this case provided a reasonable, equitable estimation of what the parties would have negotiated had Ace not engaged in an unlawful refusal to bargain. However, the Board rejected the ALJ's method for determining eligibility for holiday pay, as the lack of sufficient data in existing payroll records would make it difficult if not impossible to accurately verify employment during the two-week period preceding any holiday. Instead, the Board ruled that all employees in the makewhole class are entitled to pay for two holidays during the makewhole period, in an amount equal to 1.6 percent of each employee's earnings during the makewhole period. The Board affirmed the ALJ's findings with respect to other benefits.

The Board held that interest should be awarded on the makewhole principal, but found as it had in *San Joaquin Tomato Growers, Inc., supra*, 38 ALRB No. 4, that based on the unique circumstances presented by the extraordinary delay in enforcement, the award of interest would be contingent on the employees being located. Employees who are located will receive the makewhole principal plus interest; for employees who are not located, the principal only – without any interest – will be deposited into the Agricultural Employee Relief Fund (AERF). Chairman Gould noted that he did not participate in the Board's decision in *San Joaquin Tomato Growers*, and he dissented from the reasoning under which the Board conditioned imposition of interest on locating the employee entitled to makewhole relief, and instead urged that funds deposited with the AERF should include interest.

With respect to the issue of derivative liability, the Board concluded that the record did not support any finding of commingling of funds or other assets of Respondents Ace and Janssen. In addition, there was no evidence of undercapitalization, disregard of corporate formalities, misappropriation of funds, or misuse of the corporate form. The Board determined that adhering to the corporate form and not piercing the corporate veil in this matter would not permit a fraud, promote injustice or lead to an evasion of legal obligations.

The Board remanded the matter to the ALRB Regional Office for issuance of a revised makewhole specification calculated in accordance with its decision.

ARNAUDO BROTHERS, LP and ARNAUDO BROTHERS, INC. (2015)
41 ALRB No. 6

Background

On September 26, 2013, an ALJ found Respondents Arnaudo Brothers, LP and Arnaudo Brothers, Inc. violated sections 1153(a) and 1153(e) of the ALRA by failing to provide the certified bargaining representative, the UFW with requested information relevant to bargaining, and by failing to meet with the UFW in collective bargaining negotiations. Respondents filed numerous exceptions to the ALJ's decision, with one exception being that the ALJ had prevented them from introducing evidence that the UFW had disclaimed interest in representing Respondent's employees.

On April 4, 2014, the Board in its decision reported at 40 ALRB No. 3, dismissed the bulk of Respondents' exceptions, but ordered the record reopened to allow Respondents to present evidence on the issue of disclaimer. In a subsequent Administrative Order, issued on October 15, 2014, the Board granted the UFW's request for permission to brief the issue of the appropriateness of a bargaining makewhole award, and directed the ALJ to include a ruling on this issue in his supplemental decision following the remand hearing.

Administrative Law Judge's Supplemental Decision

The ALJ found there was no disclaimer of interest by the UFW, and that statements allegedly made to Respondents' president by UFW representatives did not clearly and unequivocally establish a disclaimer. Regarding makewhole, the ALJ rejected Respondents' argument that the parties' subsequent participation in the Mandatory Mediation and Conciliation (MMC) process pursuant to ALRA section 1164 rendered the issue of makewhole moot. The ALJ reasoned that the MMC mediator's report was not retroactive to the date of the pre-MMC refusal to bargain, and that under section 1164, the mediator has no power to find that unfair labor practices occurred, to remedy them, or to issue a makewhole award. The ALJ noted that during compliance proceedings, Respondents could attempt to show that no contract for higher wages and benefits would have been reached even if Respondents had engaged in good faith bargaining. The ALJ concluded that a makewhole award was proper, and that the makewhole period began on September 27, 2012, (when Respondents ignored the UFW's requests for bargaining and instead chose to challenge the UFW's status as the bargaining representative), and ended on May 24, 2013, the date of the first MMC mediation session. The ALJ's recommended order directed Respondents to cease and desist from failing to provide information and refusing to bargain, awarded makewhole to all bargaining unit employees for the

makewhole period, and required the posting, mailing and reading of a notice to Respondents' employees.

Board Decision

The Board affirmed the ALJ's findings and conclusions in full, and adopted the ALJ's recommended order. The Board concluded that Respondents' *Dal Porto* defense (*William Dal Porto & Sons, Inc. v. ALRB* (1987) 191 Cal.App.3d 1195) that the parties would not have agreed to a contract even absent Respondents' unlawful refusal to bargain was irrelevant to this case, as that defense is only applicable to cases involving surface bargaining, rather than an outright refusal to bargain. The Board clarified that the ALJ's statement that Respondents could be allowed, during subsequent compliance proceedings, to present evidence that no contract for higher wages or benefits would have been reached, was dicta and not controlling. The Board concluded that the ALJ properly found that the makewhole period ended with the first MMC mediation session because this statutory dispute resolution system is akin to interest arbitration, and thus, part and parcel of the bargaining process.

Member Rivera-Hernandez' Concurrence and Dissent

Member Rivera-Hernandez wrote a concurring and dissenting opinion. With respect to the Majority's decision to end the makewhole period as of the parties' first MMC session, Member Rivera-Hernandez stated that it was unclear why the commencement of MMC would terminate a makewhole period that would otherwise continue until the employer began bargaining in good faith when there was not sufficient evidence in the record to reach a conclusion as to whether or when good faith bargaining occurred. Member Rivera-Hernandez further noted that assuming the correctness of the Majority's makewhole cut-off date, no *Dal Porto* defense would be available because no bargaining occurred during the makewhole period, and in any event, such a defense must be established by the employer at the liability stage, rather than the compliance phase, as the ALJ had suggested.

ACE TOMATO COMPANY, INC. (2015) 41 ALRB No. 7

Background

This decision is a follow-up to *Ace Tomato Company, Inc., et al.* (2015) 41 ALRB No. 5, which is reported above, under which this compliance matter was remanded to the ALRB Regional Office for issuance of a revised makewhole specification. On November 13, 2015, the Acting Regional Director issued the revised makewhole specification, in accordance with the instructions set out in the Boards' prior decision, resulting in a total award of \$510,469 in makewhole principal, plus interest.

Board Decision

The Board reviewed the revised makewhole specification and found that it accurately reflected the prior decision and order in *Ace Tomato Company, Inc.*, supra, 41 ALRB No. 5. The Board rejected Respondent's contention that it was entitled to a reversion of makewhole principal that could not be distributed due to an inability to locate employees entitled to makewhole payments, restating its prior ruling that under Labor Code section 1161, any such undistributed amounts must be deposited in the Agricultural Employees Relief Fund (AERF). The Board noted that Respondent waived this argument by failing to raise it as an exception to the ALJ's decision preceding the issuance of the Board's interim order, and in any event, the argument lacks merit. The legislative creation of the AERF, several years after the original Board decision finding Respondent liable for makewhole, did nothing to change Respondent's liability for the makewhole.

Consequently, the Board ordered that Respondent, Ace Tomato Company Inc., pay bargaining makewhole as set forth in the revised makewhole specification.

GERAWAN FARMING, INC. (2016) 42 ALRB No. 1

Background

On October 25, 2013, Silvia Lopez (Petitioner) filed a petition to decertify the UFW as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. (Gerawan). An election was held on November 5, 2013. The ballots were impounded pending resolution of election objections and related unfair labor practice complaints, which were consolidated for hearing.

Administrative Law Judge's Decision

Following a 105-day hearing, on September 17, 2015, the ALJ issued a decision, finding that although Gerawan did not instigate the decertification effort, it nonetheless violated the ALRA by supporting and assisting the gathering of signatures for the decertification petition. This assistance and support included giving preferential access to decertification supporters by allowing them to circulate the decertification petition during worktime while prohibiting UFW supporters from circulating a pro-UFW petition during worktime, and by granting Petitioner a "virtual sabbatical" from work to run the decertification campaign. In addition, the ALJ found that Petitioner's group of decertification proponents violated the rights of other workers by blocking company entrances and preventing those other workers from reporting to work on September 30, 2013, as a means to collect signatures on the decertification petition.

The ALJ found that Petitioner received an unlawful \$20,000 donation from the California Fresh Fruit Association (CFFA); that Gerawan knew about this donation before and that it

was complicit with the CFFA. The ALJ found that the CFFA's conduct in this regard violated section 1155.4 of the ALRA. The ALJ also found that Gerawan committed unfair labor practices by its enhanced efforts to directly solicit employee grievances so as to bypass the UFW, and by making a well-timed unilateral wage increase.

The ALJ concluded that given the totality of the circumstances, it was impossible to know whether the signatures gathered in support of the decertification petition represented the workers' true sentiments; and that the misconduct created an environment which would have made it impossible for employees to freely choose when it came time to vote. As the ALJ concluded that Gerawan's objectionable and unlawful conduct tainted the entire decertification process, he recommended dismissing the decertification petition, setting aside the election, and otherwise remedying Gerawan's unfair labor practices.

Board Decision

The Board affirmed the ALJ's conclusion that Gerawan committed numerous unfair labor practices in connection with the decertification process, and that its conduct so tainted the process as to warrant dismissal of the decertification petition and the setting aside of the election.

The Board affirmed the ALJ's conclusion that while the evidence did not support a finding that Gerawan instigated the decertification effort, once the effort began, Gerawan improperly inserted itself into the campaign by discriminatorily permitting decertification petition signature gathering during worktime while prohibiting pro-UFW activity of the same nature. In addition, Gerawan did not discipline decertification petition signature gatherers for missing work, but continued to enforce its absence policies among the rest of the workers in its crews. The Board affirmed the ALJ's findings that Gerawan tacitly approved an unlawful work blockage which, although instigated by the decertification petition supporters, directly facilitated the gathering of signatures for the showing of interest necessary to trigger the election. The Board also affirmed the ALJ's findings that Gerawan unlawfully granted a unilateral wage increase during the decertification campaign, and unlawfully solicited employee grievances in derogation of the UFW, the certified bargaining representative.

In addition, the Board found that there was worktime decertification petition signature gathering in two additional crews beyond those found by the ALJ. The Board also found that Gerawan was liable for the violations committed by the decertification supporters during the work blockage, as Gerawan knew of the unlawful blockage and took no action to allow workers who wished to report to work to do so. With respect to the ALJ's finding that the CFFA violated section 1155.4, the Board concluded this finding was beyond the ALJ's authority as the CFFA is not a party to the instant case. However, the Board held Gerawan liable for the financial support and assistance provided by the CFFA to the decertification proponents in connection with a bus trip and pro-decertification protest in

Sacramento. The Board found that Gerawan colluded with the CFFA to make arrangements to enable the decertification proponents to travel to and attend this protest, and condoned the employees' taking time off from work for this purpose, in violation of Labor Code section 1155.4.

Chairman Gould's Concurrence

Chairman Gould concurred with the majority and wrote separately to highlight the fact that this case presented no novel issues and that the remedies imposed were quite ordinary, in that hundreds, if not thousands of cases presenting the same legal issues have come before the NLRB and the ALRB over the past eight and four decades, respectively, and that the legislative history of the enactment of the NLRA makes clear that it was intended to prohibit precisely the sort of conduct that was engaged in by Gerawan herein.

SABOR FARMS (2016) 42 ALRB No. 2

Background

This case arose when two employees of Respondent Sabor Farms protested what they contended was an unfair work assignment by refusing to perform the assignment and leaving work. The next day, Sabor informed the employees that they were being terminated for job abandonment. The employees filed an unfair labor practice charge alleging that they had been terminated for engaging in protected concerted activities in violation of section 1153(a) of the ALRA.

Administrative Law Judge's Decision

On October 5, 2015, the ALJ issued his decision, finding that under Sabor's normal assignment rotation system, the employees should have been assigned to work in the rear of Sabor's cilantro harvesting machine. However, a foreman directed the employees to work in front of the machine, an assignment that was appreciably more difficult than working behind the machine. The ALJ found that the employees initially complained that it was not their turn to work in front of the machine, and when their complaints went unheeded, they refused to perform the assignment and left work. The ALJ found that the employees' conduct constituted concerted activity protected under the ALRA, and that Sabor's termination of the employees on the basis of that conduct violated the Act. The ALJ ordered reinstatement of the employees, with backpay.

Board Decision

The Board issued its decision on April 28, 2016, affirming the ALJ's rulings, findings and conclusions in full, and adopted the ALJ's recommended order. The Board expressly rejected Sabor's argument under the rationale of *Nash-De-Camp Co. v. ALRB* (1983) 146

Cal.App.3d 92, the employees’ conduct did not constitute concerted activity. The Board observed that the analysis of protected concerted activity in *Nash* is inconsistent with the decisional precedent of the National Labor Relations Board under the National Labor Relations Act (NLRA), and that under Labor Code section 1148, the Board is statutorily required to follow the applicable precedents of the NLRA. Furthermore, the Board found that *Nash* is inapplicable as it involved different facts. *Nash* concerned an employee who complained about an error in his paycheck (and that of his wife), conduct which the court characterized as a “mere inquiry of a possible bookkeeping error” and thus, of a “personal character” and not protected. In contrast, the instant case involved a concerted refusal to work based on a dispute concerning working conditions.

Board Administrative Orders

The Board, in addition to issuing board decisions, also issues “administrative orders” or interlocutory rulings in response to motions filed by parties regarding procedural issues in connection with investigations, hearings, elections, or mandatory mediation and conciliation proceedings. Many of the motions filed by parties are appeals of decisions rendered by either an ALJ or the Executive Secretary. In fiscal year 2015-2016, the Board issued 20 administrative orders.

List of Board Administrative Orders:

| No. | Administrative Order Number | Case Name | Case Number | Issue Date | Description |
|------------|------------------------------------|---|------------------------------------|-------------------|--|
| 1. | 2015-10 | Bud Antle, Inc., dba Bud of California, Inc., and Dole Fresh Vegetables, Inc. | 2012-CE-056-SAL 2013-CE-001-SAL | 07/16/15 | 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 Petitions to Revoke Subpoenas Ad Testificandum |

| No. | Administrative Order Number | Case Name | Case Number | Issue Date | Description |
|------------|------------------------------------|---|------------------------------------|-------------------|---|
| 2. | 2015-11 | Associated Tagline, Inc., dba Ag Services | 2012-CE-006-SAL 2013-CE-040-SAL | 08/20/15 | Order Granting General Counsel's Request to Seek Court Order Enforcing Subpoena Duces Tecum |
| 3. | 2015-12 | Bud Antle, Inc., dba Bud of California, Inc., and Dole Fresh Vegetables, Inc. | 2012-CE-056-SAL 2013-CE-001-SAL | 09/02/15 | Order Denying Respondent's Motion for Reconsideration and Granting General Counsel's Request for Enforcement of Subpoenas |
| 4. | 2015-13 | Perez Packing, Inc. | 2012-CE-003-VIS 2012-CE-004-VIS | 09/21/15 | Order Granting Approval to Seek Court Enforcement of Board Order |
| 5. | 2015-14 | Bud Antle, Inc. | 2012-CE-007-SAL | 10/06/15 | Order Granting General Counsel's Request to Seek Court Order Enforcing Subpoena Duces Tecum |
| 6. | 2015-15 | George Amaral Ranches, Inc. | 2013-CE-019-SAL, et al. | 11/17/15 | Order Denying Charging Party's Application for Special Permission to Appeal ALJ's Orders |
| 7. | 2015-16 | Gerawan Farming, Inc. | 2015-CE-11-VIS 2015-CE-12-VIS | 12/08/15 | Order Setting Time for Responses to Application for Special Permission to Appeal Order Granting Petitions to Revoke Subpoenas |

| No. | Administrative Order Number | Case Name | Case Number | Issue Date | Description |
|------------|------------------------------------|--|------------------------------------|-------------------|--|
| 8. | 2015-17 | Sabor Farms | 2013-CE-047-SAL | 12/09/15 | Order Directing Respondent to Refile Exceptions in Compliance With Board Regulations 20282 |
| 9. | 2015-18 | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming | 2012-CE-010-VIS | 12/21/15 | Order Approving Bilateral Formal Settlement Agreement |
| 10. | 2015-19 | Gerawan Farming, Inc. | 2015-CE-011-VIS 2015-CE-012-VIS | 12/22/15 | Order Denying Application for Special Permission to Appeal Order Granting Petitions to Revoke Subpoenas |
| 11. | 2015-20 | Gerawan Farming, Inc. | 2013-RD-003-VIS, et al. | 12/29/15 | Order Setting Time for Responses to Application for Special Permission to Appeal Executive Secretary's Order Denying Motion for Leave to File Report of Jerome Sapiro, Jr. |
| 12. | 2016-01 | Gerawan Farming, Inc. | 2013-RD-003-VIS, et al. | 01/15/16 | Order Denying Application for Special Permission to Appeal Executive Secretary's Order Denying Motion for Leave to File Report of Jerome Sapiro, Jr. |

| No. | Administrative Order Number | Case Name | Case Number | Issue Date | Description |
|------------|------------------------------------|----------------------------------|------------------------------------|-------------------|---|
| 13. | 2016-02 | Boavista Harvest, Inc. | 2015-CE-010-SAL 2015-CE-011-SAL | 01/20/16 | Order Setting Response Time on General Counsel's Request for Enforcement of Investigative Subpoenas |
| 14. | 2016-03 | Boavista Harvest, Inc. | 2015-CE-010-SAL 2015-CE-011-SAL | 02/01/16 | Order Granting General Counsel's Request to Seek Court Order Enforcing Subpoena Duces Tecum |
| 15. | 2016-04 | Ace Tomato Company, Inc., et al. | 93-CE-37-VI | 02/26/16 | Order Approving Bilateral Formal Settlement Agreement |
| 16. | 2016-05 | Gerawan Farming, Inc. | 2012-CE-041-VIS, et al. | 03/08/16 | Order Setting Time for Responses to Application for Special Permission to Appeal ALJ's Order Denying Respondent's Request to Disqualify ALJ |
| 17. | 2016-06 | Gerawan Farming, Inc. | 2012-CE-041-VIS, et al. | 03/17/16 | Order Denying Respondent's Application for Special Permission to Appeal ALJ's Order Denying Respondent's Request to Disqualify ALJ |

| No. | Administrative Order Number | Case Name | Case Number | Issue Date | Description |
|------------|--|---|--------------------|-----------------------|---|
| 18. | 2016-07 | Premiere Raspberries, LLC dba Dutra Farms | 2016-CE-010-SAL | 04/27/16 | Order Denying Respondent's Application for Special Permission to Appeal Executive Secretary's Order Denying Continuance |
| 19. | 2016-08 | T. T. Miyasaka, Inc. | 2016-CE-011-SAL | 04/27/16 | Order Denying Respondent's Application for Special Permission to Appeal Executive Secretary's Order Denying Continuance |
| 20. | 2016-09 | Gerawan Farming, Inc. | 2013-RD-003-VIS | 05/03/16 | Order Denying Petitioner Sylvia Lopez's Petition for Reconsideration of Decision and Order 42 ALRB No. 1 |

IV. Board and General Counsel Litigation

Board decisions generally are reviewable in the California courts of appeal, with review triggered by the timely filing of a petition for review. Litigation in California superior courts may include applications for injunctive relief, the enforcement of subpoenas issued in connection with an ALRB investigation or hearing, or petitions for writ of mandate asserting constitutional challenges to actions of the Board. Cases in federal court typically involve constitutional challenges to the Act or its enforcement.

A. Board Litigation

The tables below identify litigation matters involving the Board, including the judicial forum in which a matter was pending at the conclusion of the 2015-2016 fiscal year. Generally, the Board is a respondent or defendant in such litigation cases, which typically involve appeals of Board Decisions, actions under the California Public Records Act, or petitions for writ of mandate or complaints for declaratory relief and injunctive relief asserting constitutional challenges to actions taken by the Board. For fiscal year 2015-2016, eight new litigation matters involving the Board were filed in state and federal courts as follows:

| No. | Filing Date | Case Name | Summary |
|------------|--------------------|---|---|
| 1. | 09/30/15 | <i>Arnaudo Brothers, LP and Arnaudo Brothers, Inc. v. ALRB</i> <ul style="list-style-type: none">• Fifth District Court of Appeal, Case No. F072420 | Petition for writ of review of the Board's decision (41 ALRB No. 6) rejecting employer's claim that the union disclaimed interest in representing the bargaining unit and awarding bargaining makewhole relief. |
| 2. | 10/14/15 | <i>Pauline Alvarez v. ALRB, et al.</i> <ul style="list-style-type: none">• Sacramento County Superior Court, Case No. 2015-34-00185535 | Civil action filed by Pauline Alvarez, an ALRB employee in the General Counsel's office, alleging employment discrimination and harassment. |

| No. | Filing Date | Case Name | Summary |
|-----|-------------|---|--|
| 3. | 02/09/16 | <i>Gerawan Farming, Inc. v. ALRB</i> • Fresno County Superior Court, Case No. 16-CECG-00411 | Petition for writ of mandate challenging administrative law judge's decision revoking administrative subpoenas seeking disclosure of communications between the Board and the General Counsel concerning an injunctive relief request in May 2015. |
| 4. | 02/16/16 | <i>Cedar Point Nursery and Fowler Packing Co. v. Gould, et al.</i> • U.S. Dist. Court, E.D. Cal., Case No. 1:16-cv-00185-LJO-BAM | Constitutional challenge on Fourth and Fifth Amendment grounds to the Board's access regulation (Cal. Code Regs., tit. 8, § 20900). |
| 5. | 05/16/16 | <i>Gerawan Farming, Inc. v. ALRB</i> • Fifth District Court of Appeal, Case No. F073720 | Petition for writ of review of the Board's decision (42 ALRB No. 1) finding the employer unlawfully assisted efforts to decertify the union. |
| 6. | 05/17/16 | <i>Silvia Lopez v. ALRB</i> • Fifth District Court of Appeal, Case No. F073730 | Petition for writ of mandate alleging constitutional challenges to the Board's decision (42 ALRB No. 1) dismissing a decertification petition and setting aside a decertification election held at Gerawan Farms. |
| 7. | 05/23/16 | <i>Gerawan Farming, Inc. v. ALRB</i> • Fifth District Court of Appeal, Case No. F073769 | Petition for writ of mandate alleging constitutional challenges to the Board's decision (42 ALRB No. 1) dismissing a decertification petition and setting aside a decertification election held at Gerawan Farms. |

| No. | Filing Date | Case Name | Summary |
|-----|-------------|---|---|
| 8. | 05/27/16 | <i>Sabor Farms, LLC v. ALRB</i> <ul style="list-style-type: none"> Sixth District Court of Appeal, Case No. H043618 | Petition for writ of review of the Board's decision (42 ALRB No. 2) finding the employer unlawfully terminated two employees in retaliation for engaging in protected concerted activity. |

The 16 matters identified in the table below were filed before July 1, 2015, but remained pending for some or all of fiscal year 2015-2016:

| No. | Filing Date | Case Name | Summary |
|-----|-------------|---|---|
| 1. | 08/24/12 | <i>Ace Tomato Company, Inc. v. ALRB</i> <ul style="list-style-type: none"> Fifth District Court of Appeal, Case No. F065589 | Employer seeks review and stay of Board's decision (38 ALRB No. 6) affirming the mediator's report fixing the terms of a collective bargaining agreement between the employer and the union. (Note: Request for dismissal was granted on 3/29/16, and case was dismissed after voluntary settlement.) |
| 2. | 05/6/13 | <i>Gerawan Farming, Inc. v. ALRB</i> <ul style="list-style-type: none"> Fresno County Superior Court, Case No. 13-CECG-01408 On Appeal (filed 1/5/14): Fifth District Court of Appeal, Case No. F068676 On Review (filed 6/22/15): California Supreme Court, Case No. S227243 | Action challenging the Board's order (39 ALRB No. 5) directing the employer and union to MMC proceedings. |

| No. | Filing Date | Case Name | Summary |
|-----|-------------|---|---|
| 3. | 05/17/13 | <i>Lupe García v. ALRB</i> <ul style="list-style-type: none"> Fresno County Superior Court, Case No. 13-CECG-01557 | Petition for writ of mandate; constitutional challenge to MMC proceedings and the Board's order (39 ALRB No. 5) directing the employer and union to MMC. (Gerawan employee challenge.) |
| 4. | 10/28/13 | <i>Gerawan Farming, Inc. v. ALRB</i> <ul style="list-style-type: none"> Fresno County Superior Court Case No 13-CECG-03374 On Appeal (filed 8/15/14): Fifth District Court of Appeal, Case No. F069896 | Petition for writ of mandate; First Amendment challenge to the Board's order (39 ALRB No. 13) denying an employee's petition to intervene in MMC proceedings and regarding public access to MMC. (Note: Opinion issued 5/9/16; pending issuance of remittitur.) |
| 5. | 11/22/13 | <i>San Joaquin Tomato Growers, Inc. v. ALRB</i> <ul style="list-style-type: none"> Fifth District Court of Appeal, Case No. F068406 Petition for Review (filed 6/22/15): California Supreme Court, Case No. S227250 | Petition for writ of review of Board's decision (39 ALRB No. 15) and order awarding bargaining makewhole relief. (Note: Opinion issued 5/14/15 affirming Board decision; Petition for Review in California Supreme Court denied 8/24/15.) |
| 6. | 12/16/13 | <i>Gerawan Farming, Inc. v. ALRB</i> <ul style="list-style-type: none"> Fifth District Court of Appeal, Case No. F068526 On Review (filed 6/22/15): California Supreme Court, Case No. S227243 | Statutory and constitutional challenges to Board's decision (39 ALRB No. 17) approving a MMC contract between the employer and union. |
| 7. | 02/20/14 | <i>Silvia Lopez v. Shiroma, et al.</i> <ul style="list-style-type: none"> U.S. Dist. Court, E.D. Cal., Case No. 1:14-CV-00236-LJO-GSA On appeal (filed 8/22/14): U.S. Court of Appeals, Ninth Circuit, Case No. 14-16640 | Civil rights action under 42 USC § 1983 arising out of a decertification election held at Gerawan Farms. |

| No. | Filing Date | Case Name | Summary |
|-----|-------------|---|--|
| 8. | 05/23/14 | <i>Tri-Fanucchi Farms v. ALRB</i> <ul style="list-style-type: none"> • Fifth District Court of Appeal, Case No. F069419 • On Review (filed 6/23/15): California Supreme Court, Case No. S227270 | Petition for writ of review of Board's decision (40 ALRB No. 4) rejecting employer's contention that the union abandoned the bargaining unit and awarding makewhole relief. |
| 9. | 06/18/14 | <i>United Farm Workers v. ALRB (Corralitos Farms, LLC)</i> <ul style="list-style-type: none"> • Sixth District Court of Appeal, Case No. H041113 | Petition for writ of review of Board's decision (40 ALRB No. 6) finding union unlawfully picketed for representative status. |
| 10. | 09/15/14 | <i>Francisco Acheron v. ALRB, et al.</i> <ul style="list-style-type: none"> • Sacramento County Superior Court, Case No. 34-2014-00168939 | Civil action filed by Francisco Acheron, an ALRB employee in the General Counsel's office, alleging employment discrimination and harassment. |
| 11. | 09/26/14 | <i>P & M Vanderpoel Dairy v. ALRB</i> <ul style="list-style-type: none"> • Fifth District Court of Appeal, Case No. F070149 • Petition for Review (filed 11/19/15): California Supreme Court, Case No. S230401 • Petition for Certiorari (filed 4/26/16): U.S. Supreme Court, Case No. 15-1322 | Petition for writ of review of Board's decision (40 ALRB No. 8) finding employer wrongfully fired dairy workers for protected concerted activity (requesting pay raise). (Note: Unpublished opinion issued 11/3/15 affirming Board decision; petition for review denied by California Supreme Court; petition for certiorari denied by U.S. Supreme Court.) |

| No. | Filing Date | Case Name | Summary |
|-----|-------------|---|--|
| 12. | 10/20/14 | <i>Lupe Garcia v. ALRB</i> <ul style="list-style-type: none"> • Fresno County Superior Court, Case No. 13-CECG-03374 • On Appeal (filed 9/19/14): Fifth District Court of Appeal, Case No. F070287 | Appeal by Gerawan employee who intervened in trial court proceedings challenging the trial court's denial of petition for writ of mandate alleging constitutional challenge to MMC proceedings, including right of public access. (Note: Opinion issued 5/9/16; pending issuance of remittitur.) |
| 13. | 11/26/14 | <i>Kawahara Nurseries, Inc. v. ALRB</i> <ul style="list-style-type: none"> • Sixth District Court of Appeal, Case No. H041686 | Petition for writ of review of Board's decision (41 ALRB No. 11) 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. (Note: Order denying petition filed 6/17/16.) |
| 14. | 05/07/15 | <i>California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms v. ALRB</i> <ul style="list-style-type: none"> • Fourth District Court of Appeal, Case No. E063489 • Petition for Review (filed 12/1/15): California Supreme Court, Case No. S230890 • Petition for Certiorari (filed 4/12/16): U.S. Supreme Court, Case No. 15-1272 | Petition for writ of review of Board's decision (41 ALRB No. 2) finding that employer unlawfully terminated and discriminated against employees based on their union activity and refused to rehire workers based on their union activity. (Note: Unpublished opinion issued 11/18/15 affirming Board decision; petition for review denied by California Supreme Court; petition for certiorari denied by U.S. Supreme Court.) |

| No. | Filing Date | Case Name | Summary |
|-----|-------------|--|---|
| 15. | 05/29/15 | <i>Arnaudo Brothers, LP and Arnaudo Brothers, Inc. v. ALRB</i> <ul style="list-style-type: none"> Fifth District Court of Appeal, Case No. F071598 | Petition for writ of review of the Board's decision (41 ALRB No. 3) approving the terms of a MMC collective bargaining agreement between the employer and union. (Note: Order dismissing petition filed 8/6/15.) |
| 16. | 06/02/15 | <i>Gerawan Farming, Inc. v. ALRB</i> <ul style="list-style-type: none"> Sacramento County Superior Court, Case No. 34-2015-80002100 On Appeal (filed 2/24/16): Third District Court of Appeal, Case No. C081373 | Public Records Act litigation seeking disclosure of communications between the Board and General Counsel relating to a request by the General Counsel for authority to seek injunctive relief against Gerawan Farming, Inc. in connection with unfair labor practice charges. |

B. General Counsel Litigation

For fiscal year 2015-2016, the table below lists and describes superior court and appellate courts actions being handled by General Counsel staff. Litigation matters handled by the General Counsel's office typically involve injunctive relief requests or enforcement of administrative subpoenas.

| No. | Filing Date | Case Name | Summary |
|-----|-------------|--|---|
| 1. | 11/23/15 | <i>ALRB v. Bud Antle & Dole Fresh Vegetables</i> Monterey County Superior Court, Case No. 15CV000487 | Subpoena enforcement action filed by the General Counsel relating to unfair labor practice charges involving Bud Antle and Dole Fresh Vegetables (2012-CE-056-SAL and 2013-CE-001-SAL). The court granted the General Counsel's motion to enforce the subpoena. |

V. Unfair Labor Practice Charges

Unfair Labor Practice (ULP) charges, alleging violations of the Act, may be filed by agricultural employees, labor organizations against agricultural employers, or by agricultural employers against labor organizations. ULP charges are investigated by the General Counsel's office. The General Counsel then decides whether to dismiss the charge (if no merit) or to issue a ULP complaint. Some charges are settled, both before and after the filing of a ULP complaint. Cases with ULP complaints are scheduled for a case management conference, a pre-hearing conference and an evidentiary hearing before an ALRB ALJ. After the hearing, the ALJ issues a written decision, which includes a remedial order if violations of the Act are found.

In some instances, a separate "compliance hearing" occurs to establish the amount of the monetary award to compensate the charging party for lost wages and other economic losses resulting from a violation of the Act. The ULP charges are typically handled entirely within the ALRB's administrative framework, but the General Counsel occasionally utilizes the courts to enforce subpoenas and to seek injunctive relief for an immediate court order remedying an egregious unfair labor practice.

A. ULP Charges

At the beginning of the 2015-2016 fiscal year, the General Counsel's office had a total of 115 pending ULP charges. Throughout fiscal year 2015-2016, an additional 115 ULP charges were filed creating a total of pending 230 ULP charges. Of the 230 ULP charges, 22 charges were withdrawn, 39 charges were dismissed, 44 charges were settled, and 10 charges went to complaint.

| | Salinas Regional Office | Visalia Regional Office | Total |
|----------------------|------------------------------------|------------------------------------|--------------|
| Charges Filed | 67 | 48 | 115 |
| Withdrawn | 7* | 15* | 22 |
| Dismissed | 15* | 24* | 39 |
| Charges Settled | 36* | 8* | 44 |
| Charges to Complaint | 8* | 2* | 10 |

*Encompasses charges filed before fiscal year 2015-2016.

B. ULP Investigation-Subpoena Enforcement

In fiscal year 2015-2016, the General Counsel sought to enforce a subpoena in Superior Court in connection with one unfair labor practice charge.

A Subpoena Enforcement action was filed with the Monterey County Superior Court on November 23, 2015, in the matter of Bud Antle and Dole Fresh Vegetables (2012-CE-056-SAL and 2013-CE-001-SAL). A hearing was held on this matter on January 8, 2016. The General Counsel's motion was granted and Respondent was ordered to comply with the Subpoena.

| No. | Filing Date | Case Name | Summary |
|------------|--------------------|--|---|
| 1. | 11/23/15 | <i>ALRB v. Bud Antle & Dole Fresh Vegetables</i> Monterey County Superior Court, Case No. 15CV000487 | Subpoena enforcement action filed by the General Counsel relating to unfair labor practice charges involving Bud Antle and Dole Fresh Vegetables (2012-CE-056-SAL and 2013-CE-001-SAL). The court granted the General Counsel's motion to enforce the subpoena. |

C. ULP Complaints

During the fiscal year 2015-2016, the General Counsel issued nine new complaints encompassing 10 charges.

| | Salinas Regional Office | Visalia Regional Office | Total |
|--------------------|--------------------------------|--------------------------------|--------------|
| Complaints Issued | 7 | 2 | 9 |
| Withdrawn | 0 | 0 | 0 |
| Dismissed | 0 | 0 | 0 |
| Complaints Settled | 20* | 6* | 26* |

*Encompasses complaints filed before fiscal year 2015-2016.

List of Complaints:

| No. | Case No. | Respondent | Complaint Date | Status as of 6/30/16 |
|------------|------------------------------------|--|-----------------------|---|
| 1. | 2014-CE-022-SAL | Express Harvesting | 12/22/15 | Settlement agreement reached on 02/09/2016 |
| 2. | 2015-CE-001-SAL 2015-CE-002-SAL | Ventura Terra Garden | 12/31/15 | Settlement agreement reached on 04/05/2016 |
| 3. | 2015-CE-011-SAL | Boavista Harvest | 12/31/15 | Settlement agreement reached on 05/20/2016 |
| 4. | 2016-CE-010-SAL | Premiere Raspberries, LLC dba Dutra Farms | 03/02/2016 | Hearing conducted 05/05/2016, pending ALJ Decision. |
| 5. | 2016-CE-011-SAL | T.T. Miyasaka, Inc. | 03/10/2016 | Hearing conducted 05/03/2016, pending ALJ decision. |
| 6. | 2015-CE-034-SAL | Vasvision Berry Farms | 04/01/2016 | Settlement agreement reached on 05/02/2016. |
| 7. | 2015-CE-022-SAL | J. Lohr Vineyards | 06/30/2016 | Pending hearing scheduling. |
| 8. | 2015-CE-048-VIS | Konark Ranches | 06/30/2016 | Pending hearing scheduling. |
| 9. | 2015-CL-006-VIS | UFW | 06/30/2016 | Pending hearing scheduling. |

D. Injunctive Relief

During the fiscal year 2015-2016, the General Counsel sought no injunctive relief.

E. ULP Settlements

During the fiscal year 2015-2016, the General Counsel achieved 26 settlement agreements, which resolved 44 unfair labor practice charges. Of these settlement agreements, 9 were achieved pre-complaint and 17 were achieved post-complaint.

Pre-Complaint Settlements

During the fiscal year 2015-2016, the General Counsel reached nine pre-complaint settlements encompassing 12 charges.

| No. | Case No. | Respondent | Settlement Type⁸ | Settlement Date |
|------------|------------------------------------|-------------------|------------------------------------|------------------------|
| 1. | 2014-CE-002-SAL | Success Valley | Informal Bilateral | 07/20/2015 |
| 2. | 2013-CE-041-SAL | Vasvision Berry | Informal Bilateral | 09/07/2015 |
| 3. | 2014-CE-028-SAL | Suncoast Nursery | Informal Bilateral | 09/24/2015 |
| 4. | 2013-CL-005-SAL | UFW | Informal Bilateral | 11/02/2015 |
| 5. | 2015-CE-017-SAL 2015-CE-018-SAL | Premier Raspberry | Informal Bilateral | 12/30/2015 |
| 6. | 2015-CE-040-SAL 2015-CE-050-SAL | J&E Berry | Informal Bilateral | 02/10/2016 |
| 7. | 2013-CL-002-SAL | UFW | Informal Bilateral | 02/12/2016 |
| 8. | 2016-CE-005-SAL 2016-CE-007-SAL | Etchandy Farms | Informal Bilateral | 06/27/2016 |
| 9. | 2014-CE-014-VIS | WM Bolthouse | Informal Bilateral | 07/16/15 |

⁸ Informal settlements are those that occur prior to hearing, as opposed to formal settlements that occur after hearing. A bilateral settlement is one in which both the charging party and the respondent are parties to a settlement with the ALRB. A Unilateral Settlement is one in which only the respondent is a party to the settlement with the ALRB and not the charging party.

Post-Complaint Settlements

During the fiscal year 2015-2016, the General Counsel reached 17 post-complaint settlements encompassing 32 charges.

| No. | Case No. | Respondent | Settlement Type | Settlement Date |
|------------|---|--|------------------------|------------------------|
| 1. | 2014-CE-042-SAL | Eclipse Berry Farms | Informal Bilateral | 07/15/2015 |
| 2. | 2014-CE-021-SAL | T-Y Nursery, Inc. | Informal Bilateral | 08/14/2015 |
| 3. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific, LLC | Informal Unilateral | 08/26/2015 |
| 4. | 2013-CE-013-VIS | Frank Pinheiro Dairy | Informal Bilateral | 10/27/2015 |
| 5. | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2013-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL | George Amaral Ranches | Informal Bilateral | 11/05/2015 |
| 6. | 2015-CE-003-SAL 2015-CE-004-SAL | Muranaka Farm Inc. | Informal Bilateral | 11/05/2015 |
| 7. | 2014-CE-007-VIS | Sun Pacific | Informal Bilateral | 11/09/2015 |
| 8. | 2012-CE-010-VIS | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | Formal Bilateral | 12/11/2015 |
| 9. | 2014-CE-022-SAL | Express Harvesting | Informal Bilateral | 02/09/2016 |
| 10. | 2012-CE-006-SAL 2013-CE-040-SAL | Associated Tagline | Informal Bilateral | 02/09/2016 |
| 11. | 2013-CE-026-SAL | Monterey Mushrooms, Inc. | Informal Bilateral | 02/11/2016 |
| 12. | 1993-CE-37-VIS | Ace Tomato Company | Formal Bilateral | 02/16/2016 |
| 13. | 2012-CE-007-VIS 2012-CE-028-VIS 2012-CE-029-VIS 2012-CE-024-VIS | Ace Tomato Company | Informal Bilateral | 02/16/2016 |

| No. | Case No. | Respondent | Settlement Type | Settlement Date |
|------------|--|------------------------|------------------------|------------------------|
| 14. | 2012-CE-056-SAL 2013-CE-001-SAL | Bud Antle | Informal Bilateral | 03/02/2016 |
| 15. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL ⁹ | Ventura Terra Garden | Informal Bilateral | 04/05/2016 |
| 16. | 2015-CE-034-SAL | Vasvision Berry Farms | Informal Bilateral | 05/02/2016 |
| 17. | 2015-CE-011-SAL | Boavista Harvest, Inc. | Informal Bilateral | 05/20/2016 |

F. Unfair Labor Practice and Compliance Hearings

During fiscal year 2015-2016, the Board held three hearings before an ALJ in ULP cases and no hearing(s) on compliance. Cases are listed by Hearing Closed date.

| No. | Case No. | Respondent | Hearing Opened | Hearing Closed | No. of Hearing Days |
|--------------|-----------------|---|-----------------------|-----------------------|----------------------------|
| 1. | 2013-CE-047-SAL | Sabor Farms | 08/18/15 | 08/19/15 | 2 |
| 2. | 2016-CE-010-SAL | Premiere Raspberries, LLC dba Dutra Farms | 05/03/16 | 05/03/16 | 1 |
| 3. | 2016-CE-011-SAL | T.T. Miyasaka Inc. | 05/04/16 | 05/04/16 | 1 |
| TOTAL | | | | | 4 Days |

⁹ A complaint was not issued on this charge but it was settled along with the immediately preceding two charges that went to complaint.

VI. Remedies and Disbursements

The Board is empowered to order a wide range of remedies to effectuate the purposes of the Act and to “make whole” the victims of unfair labor practices. These remedies may include reinstatement of an unlawfully discharged employee, an award of lost wages and benefits, various non-monetary remedies--including orders to cease and desist from engaging in similar conduct that violates the Act--and the issuance of notices to employees as discussed below.

Once a Board decision is final and the decision awards backpay (the lost earnings resulting from an unlawful discharge) and/or other remedies (appeals have been exhausted and the decisions have been upheld), the Board releases the case back to the applicable region for compliance to effectuate the remedies of that decision. Amounts received from parties who have been ordered to make backpay payments are transmitted by the ALRB to the farmworkers in the amounts awarded to them. Efforts are made to locate all farmworkers who are entitled to backpay. If the ALRB is unable to locate a farmworker entitled to backpay for a period of two years following the collection of the amount owed, this amount is deposited into the Agricultural Employee Relief Fund ("AERF"). Monies in the AERF fund are used by the ALRB to pay farmworkers the unpaid balance of any monetary relief ordered by the Board in other matters that cannot be collected from the violator. Thus, on a year-to-year basis, there may not be a direct comparison between the amounts collected and amounts disbursed as monetary remedies.

A. Remedies

In fiscal year 2015-2016, the Board released three cases for compliance:

| No. | Case No. | Respondent Name | Date of Compliance | Award Amount |
|------------|------------------------------------|--|---------------------------|---------------------|
| 1. | 2013-CE-016-VIS | P&M Vanderpoel Dairy | 02/04/2016 | N/A |
| 2. | 2012-CE-044-VIS 2013-CE-012-VIS | California Artichoke and Vegetable Growers Corp., dba Ocean Mist Farms | 02/04/2016 | N/A |
| 3. | 2011-CE-005-SAL | Kawahara Nursery, Inc. | 06/05/2016 | TBD |

Monetary Remedies

In fiscal year 2015-2016, the ALRB obtained 19 payments in 17 cases encompassing 34 charges for a total of \$467,210.81. Of that total, \$69,454.85 was collected pursuant to settlement agreements that were achieved during current and prior fiscal years. Of the original total, \$397,755.96 was collected pursuant to a Board Order.

Monies Collected

| No. | Case No. | Respondent Name | Deposits |
|--------------|---|----------------------------|---------------------|
| 1. | 93-CE-037-VIS | Ace Tomato | \$200,000.00 |
| 2. | 2012-CE-007-VIS 2012-CE-028-VIS 2012-CE-029-VIS 2012-CE-024-VIS | Ace Tomato | 90,000.00 |
| 3. | 93-CE-038-VIS | San Joaquin Tomato Growers | 100,000.00 |
| 4. | 2015-CE-011-SAL | Boavista Harvest | 457.25 |
| 5. | 2015-CE-017-SAL 2015-CE-018-SAL | Premiere Raspberry | 2,792.77 |
| 6. | 2014-CE-042-SAL | Eclipse Berry Farms | 7,406.25 |
| 7. | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2014-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL | George Amaral | 1,583.24 |
| 8. | 2014-CE-030-VIS | KC Ag, LLC | 4,721.90 |
| 9. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | 7,267.46 |
| 10. | 2012-CE-010-VIS | Sandhu Brothers | 5,142.64 |
| 11. | 2012-CE-010-VIS | Sandhu Brothers | 2,571.32 |
| 12. | 2012-CE-010-VIS | Sandhu Brothers | 42.00 |
| 13. | 2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL | Santa Paula Berry Farms | 14,028.66 |
| 14. | 2014-CE-007-VIS | Sun Pacific Farming Co-op | 3,681.22 |
| 15. | 2014-CE-028-SAL | Suncoast Nursery | 7,866.57 |
| 16. | 2014-CE-021-SAL | T-Y Nursery | 15,000.00 |
| 17. | 2013-CL-005-SAL | UFW | 1,825.04 |
| 18. | 2013-CE-041-SAL | Vasvision Berry Farms | 191.67 |
| 19. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL | Ventura Terra Garden Inc. | 2,632.82 |
| TOTAL | | | \$467,210.81 |

Payments were ordered in 18 cases encompassing 33 charges as a result of an Informal Settlement Agreement or Private Party Agreement.¹⁰

Payments Ordered

| No. | Case No. | Respondent Name | Settlement Type | Award Amount |
|------------|---|--|------------------------|---------------------|
| 1. | 2014-CE-042-SAL | Eclipse Berry Farms | Informal Bilateral | \$ 7,406.00 |
| 2. | 2014-CE-014-VIS | WM Bolthouse | Informal Bilateral | 1,998.00 |
| 3. | 2014-CE-021-SAL | T-Y Nursery, Inc. | Informal Bilateral | 15,000.00 |
| 4. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | Informal Unilateral | 7,267.46 |
| 5. | 2013-CE-041-SAL | Vasvision Berry Farms | Informal Bilateral | 191.00 |
| 6. | 2014-CE-028-SAL | Suncoast Nursery | Informal Bilateral | 7,866.57 |
| 7. | 2013-CE-013-VIS | Frank Pinheiro Dairy | Informal Bilateral | 15,000.00 |
| 8. | 2013-CL-005-SAL | UFW | Informal Bilateral | 1,825.04 |
| 9. | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2013-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2105-CE-014-SAL | George Amaral | Informal Bilateral | 1,583.00 |
| 10. | 2014-CE-007-VIS | Sun Pacific Farming Co-op | Informal Bilateral | 3,681.22 |
| 11. | 2012-CE-010-VIS | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | Formal Bilateral | 10,000.00 |

¹⁰ The number of payments ordered during fiscal year 2015-2016 is not necessarily the same as the number of payments collected by ALRB during the fiscal year. These figures differ for various reasons, including the lag in time between when an order is obtained to when payment is actually collected, the fact that some payments are paid directly to the charging party and not the ALRB.

| No. | Case No. | Respondent Name | Settlement Type | Award Amount |
|--------------|---|------------------------|------------------------|---------------------|
| 12. | 2015-CE-017-SAL 2015-CE-018-SAL | Premier Raspberry | Informal Bilateral | 2,792.77 |
| 13. | 2015-CE-040-SAL 2015-CE-050-SAL | J&E Berry | Informal Bilateral | 450.00 |
| 14. | 2012-CE-007- VIS 2012-CE-028-VIS 2012-CE-029-VIS 2012-CE-024-VIS | Ace Tomato Co. | Informal Bilateral | 90,000.00 |
| 15. | 93-CE-037-VIS | Ace Tomato Co. | Formal Bilateral | 200,000.00 |
| 16. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL | Ventura Terra Garden | Informal Bilateral | 3,442.00 |
| 17. | 2015-CE-011-SAL | Boavista Harvest | Informal Bilateral | 500.00 |
| 18. | 2016-CE-005-SAL 2016-CE-007-SAL | Etchandy Farms | Informal Bilateral | 11,646.00 |
| TOTAL | | | | \$380,649.06 |

In fiscal year 2015-2016, the ALRB issued 87 checks from 15 cases to farmworkers as a result of findings of liability in unfair labor practice cases or as a result of settlement agreements:

Checks Issued to Farmworkers

| No. | Case No. | Respondent Name | Number of Checks Issued | Total Net Amount Issued |
|------------|---|-------------------------|--------------------------------|--------------------------------|
| 1. | 2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL | Santa Paula Berry Farms | 7 | \$ 8,948.59 |
| 2. | 2014-CE-030-VIS | KC Ag, LLC | 2 | 4,721.90 |
| 3. | 2014-CE-042-SAL | Eclipse Berry Farms | 1 | 7,406.25 |
| 4. | 2014-CE-021-SAL | T-Y Nursery | 1 | 15,000.00 |
| 5. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | 37 | 5,860.04 |
| 6. | 2013-CE-041-SAL | Vasvision Berry Farms | 1 | 191.67 |

| No. | Case No. | Respondent Name | Number of Checks Issued | Total Net Amount Issued |
|-----|------------------------------------|--|-------------------------|-------------------------|
| 7. | 2014-CE-028-SAL | Suncoast Nursery | 5 | 7,866.57 |
| 8. | 2013-CL-005-SAL | UFW | 16 | 290.54 |
| 9. | 2012-CE-019-SAL 2012-CE-023-SAL | George Amaral | 1 | 1,583.24 |
| 10. | 2014-CE-007-VIS | Sun Pacific Farming Co-op | 2 | 3,681.22 |
| 11. | 2015-CE-017-SAL 2015-CE-018-SAL | Premiere Raspberries | 2 | 2,792.77 |
| 12. | 2012-CE-010-VIS | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | 3 | 7,755.96 |
| 13. | 2015-CE-011-SAL | Boavista Harvest | 1 | 457.25 |
| 14. | 2013-CE-002-VIS | RBI Packing | 1 | 644.09 |
| 15. | 2013-CE-059-SAL | Silent Springs | 7 | 2,770.92 |
| | | TOTAL | 87 | \$69,971.01 |

Non-Monetary Remedies

In cases where a violation is found, the Board generally orders noticing remedies in addition to monetary awards. A negotiated settlement signed by the parties may also include noticing remedies in addition to monetary awards. A noticing remedy requires the employer to post, mail and/or read a prepared notice to all agricultural employees so they can become aware of the outcome of the case.

The ALRB conducted a **notice reading** to 5,229 agricultural employees in 24 cases encompassing 44 charges in fiscal year 2015-2016.

| No. | Case No. | Respondent Name | Date of Notice Reading | Number of Employees at Reading |
|-----|-----------------|------------------|------------------------|--------------------------------|
| 1. | 2014-CE-030-VIS | KC Ag, LLC | 07/16/2015 | 75 |
| 2. | 2014-CE-017-VIS | Richter Brothers | 08/07/2015 | 170 |

| No. | Case No. | Respondent Name | Date of Notice Reading | Number of Employees at Reading |
|------------|--|---|-------------------------------|---------------------------------------|
| 3. | 2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL | Harbor View Farms | 07/17/2015 | 107 |
| 4. | 2015-CE-020-SAL | Dynasty Farms | 07/16/2016 | 100 |
| 5. | 2014-CE-042-SAL | Eclipse Berry Farms | 10/02/2015 | 150 |
| 6. | 2014-CE-014-VIS | WM Bolthouse | 10/01/2015 | 175 |
| 7. | 2014-CE-002-SAL | Success Valley Farms | 10/13/2015 | 200 |
| 8. | 2014-CE-021-SAL | T-Y Nursery, Inc. | 09/22/2015 | 200 |
| 9. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | 09/18/2015 | 220 |
| 10. | 2013-CE-041-SAL | Vasvision Berry Farms | 09/15/2015 | 201 |
| 11. | 2014-CE-028-SAL | Suncoast Nursery | 10/23/2015 | 45 |
| 12. | 2013-CE-013-VIS | Frank Pinheiro Dairy | 12/01/2015 | 15 |
| 13. | 2013-CL-005-SAL | UFW | 05/13/2016 | 300 |
| 14. | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2014-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL | George Amaral | 05/05/2015 | 140 |
| 15. | 2015-CE-003-SAL 2015-CE-004-SAL | Muranaka Farms | 12/15/2015 | 182 |
| 16. | 2012-CE-010-VIS | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | 09/30/2015 | 63 |
| 17. | 2012-CE-006-SAL 2013-CE-040-SAL | Associated Tagline | 01/27/2016 | 9 |
| 18. | 2014-CE-022-SAL | Express Harvest | 05/05/2016 | 99 |
| 19. | 2015-CE-040-SAL 2015-CE-050-SAL | J&E Berry | 04/13/2016 | 120 |
| 20. | 2013-CE-026-SAL | Monterey Mushrooms, Inc. | 02/25/2016 | 493 |
| 21. | 2013-CL-002-SAL | UFW | 03/17/2016 | 547 |

| No. | Case No. | Respondent Name | Date of Notice Reading | Number of Employees at Reading |
|-----|---|-----------------------|------------------------|--------------------------------|
| 22. | 2012-CE-056-SAL 2013-CE-001-SAL | Bud Antle | 04/21/2016 | 1403 |
| 23. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL | Ventura Terra Garden | 05/17/2016 | 34 |
| 24. | 2015-CE-034-SAL | Vasvision Berry Farms | 06/01/2016 | 181 |
| | TOTAL | | | 5,229 |

The ALRB issued a **notice mailing** to 8,789 agricultural employees in 15 cases encompassing 32 charges.

| No. | Case No. | Respondent Name | Date of Notice Mailing | Number of Employees Received Mailing |
|-----|--|-----------------------|------------------------|--------------------------------------|
| 1. | 2014-CE-030-VIS | KC Ag, LLC | 09/16/2015 | 75 |
| 2. | 2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL | Harbor View Farms | 07/20/2015 | 400 |
| 3. | 2014-CE-042-SAL | Eclipse Berry Farms | 10/02/2015 | 1191 |
| 4. | 2014-CE-014-VIS | WM Bolthouse | 08/21/2015 | 1850 |
| 5. | 2014-CE-021-SAL | T-Y Nursery, Inc. | 09/15/2015 | 69 |
| 6. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | 09/23/2016 | 1700 |
| 7. | 2013-CE-041-SAL | Vasvision Berry Farms | 10/02/2015 | 925 |
| 8. | 2013-CL-005-SAL | UFW | 02/17/2016 | 559 |
| 9. | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2014-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL | George Amaral | 11/06/2015 | 347 |

| No. | Case No. | Respondent Name | Date of Notice Mailing | Number of Employees Received Mailing |
|------------|------------------------------------|---|-------------------------------|---|
| 10. | 2015-CE-003-SAL 2015-CE-004-SAL | Muranaka Farm | 04/06/2016 | 165 |
| 11. | 2012-CE-010-VIS | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | 07/17/2015 | 315 |
| 12. | 2015-CE-040-SAL 2015-CE-050-SAL | J&E Berry | 04/28/2016 | 104 |
| 13. | 2013-CL-002-SAL | UFW | 05/13/2016 | 741 |
| 14. | 2015-CE-001-SAL 2015-CE-002-SAL | Ventura Terra Garden | 06/16/2016 | 82 |
| 15. | 2015-CE-034-SAL | Vasvision Berry Farms | 06/01/2016 | 266 |
| | TOTAL | | | 8,789 |

The ALRB completed a **notice posting** in 21 cases encompassing 41 charges.

| No. | Case No. | Respondent Name | Date of Notice Posting |
|------------|--|------------------------|-------------------------------|
| 1. | 2014-CE-030-VIS | KC Ag, LLC | 07/16/2015 |
| 2. | 2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL | Harbor View Farms | 07/17/2015 |
| 3. | 2015-CE-020-SAL | Dynasty Farms | 07/16/2015 |
| 4. | 2014-CE-042-SAL | Eclipse Berry Farms | 10/02/2015 |
| 5. | 2014-CE-014-VIS | WM Bolthouse | 10/01/2015 |
| 6. | 2014-CE-021-SAL | T-Y Nursery, Inc. | 09/22/2015 |
| 7. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | 09/18/2015 |
| 8. | 2013-CE-041-SAL | Vasvision Berry Farms | 09/15/2015 |
| 9. | 2014-CE-028-SAL | Suncoast Nursery | 10/23/2015 |
| 10. | 2013-CE-013-VIS | Frank Pinheiro Dairy | 12/01/2015 |

| No. | Case No. | Respondent Name | Date of Notice Posting |
|------------|---|---|-------------------------------|
| 11. | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2014-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL | George Amaral | 11/09/2015 |
| 12. | 2015-CE-003-SAL 2015-CE-004-SAL | Muranaka Farms | 12/15/2015 |
| 13. | 2012-CE-010-VIS | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | 09/30/2015 |
| 14. | 2015-CE-017-SAL 2015-CE-018-SAL | Premier Raspberry | 03/07/2016 |
| 15. | 2012-CE-006-SAL 2013-CE-040-SAL | Associated Tagline | 01/27/2016 |
| 16. | 2014-CE-022-SAL | Express Harvest | 05/05/2016 |
| 17. | 2015-CE-040-SAL 2015-CE-050-SAL | J&E Berry | 04/13/2016 |
| 18. | 2013-CE-026-SAL | Monterey Mushrooms, Inc. | 02/17/2016 |
| 19. | 2013-CL-002-SAL | UFW | 03/15/2016 |
| 20. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL | Ventura Terra Garden | 05/17/2016 |
| 21. | 2015-CE-034-SAL | Vasvision Berry Farms | 06/01/2016 |

The General Counsel **trained 229 supervisors** of farmworkers in 19 cases encompassing 30 charges.

| No. | Case No. | Respondent Name | Date Training Held | Number of Supervisors Received Training |
|------------|-----------------|------------------------|---------------------------|--|
| 1. | 2015-CE-017-VIS | Joe Parreira Dairy | 07/05/2015 | 16 |
| 2. | 2014-CE-030-VIS | KC Ag, LLC | 07/16/2015 | 2 |

| No. | Case No. | Respondent Name | Date Training Held | Number of Supervisors Received Training |
|------------|--|--------------------------|---------------------------|--|
| 3. | 2013-CE-035-SAL 2013-CE-045-SAL 2013-CE-046-SAL 2013-CE-048-SAL 2013-CE-049-SAL 2013-CE-050-SAL 2013-CE-055-SAL 2014-CE-003-SAL | Harbor View Farms | 07/17/2015 | 10 |
| 4. | 2015-CE-020-SAL | Dynasty Farms | 07/16/2015 | 9 |
| 5. | 2014-CE-042-SAL | Eclipse Berry Farms | 10/02/2015 | 14 |
| 6. | 2014-CE-014-VIS | WM Bolthouse | 10/01/2015 | 14 |
| 7. | 2014-CE-002-SAL | Success Valley Farms | 10/13/2015 | 10 |
| 8. | 2014-CE-021-SAL | T-Y Nursery, Inc. | 09/22/2015 | 16 |
| 9. | 2014-CE-024-SAL 2014-CE-025-SAL | Rincon Pacific | 09/18/2015 | 8 |
| 10. | 2013-CE-041-SAL | Vasvision Berry Farms | 09/15/2015 | 22 |
| 11. | 2014-CE-028-SAL | Suncoast Nursery | 10/23/2015 | 5 |
| 12. | 2013-CE-013-VIS | Frank Pinheiro Dairy | 12/01/2015 | 3 |
| 13. | 2015-CE-003-SAL 2015-CE-004-SAL | Muranaka Farms | 12/15/2015 | 13 |
| 14. | 2014-CE-022-SAL | Express Harvest | 05/05/2016 | 8 |
| 15. | 2015-CE-040-SAL | J&E Berry | 04/13/2016 | 11 |
| 16. | 2013-CE-026-SAL | Monterey Mushrooms, Inc. | 02/17/2016 | 30 |
| 17. | 2013-CL-002-SAL | UFW | 03/15/2016 | 15 |
| 18. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL | Ventura Terra Garden | 05/17/2016 | 8 |
| 19. | 2015-CE-034-SAL | Vasvision Berry Farms | 06/01/2016 | 15 |
| | TOTAL | | | 229 |

B. Deposits and Disbursements

All payments collected from settlements or board-ordered monetary remedies are deposited into the ALRB trust fund before being distributed to the charging parties, unless the checks are made out directly in the name(s) of the charging parties. During

fiscal year 2015-2016, the ALRB deposited payments from 19 cases, encompassing 34 separate charges.

DEPOSITS

| No. | Case Name | Case No. | Deposits |
|------------|----------------------------|---|-----------------|
| 1. | Ace Tomato | 93-CE-037-VIS | \$200,000.00 |
| 2. | Ace Tomato | 2012-CE-007-VIS 2012-CE-028-VIS 2012-CE-029-VIS 2012-CE-024-VIS | 90,000.00 |
| 3. | Boavista Harvest | 2015-CE-011-SAL | 457.25 |
| 4. | Premiere Raspberry | 2015-CE-017-SAL 2015-CE-018-SAL | 2,792.77 |
| 5. | Eclipse Berry Farms | 2014-CE-042-SAL | 7,406.25 |
| 6. | George Amaral | 2013-CE-019-SAL 2013-CE-023-SAL 2013-CE-024-SAL 2014-CE-026-SAL 2014-CE-027-SAL 2015-CE-013-SAL 2015-CE-014-SAL | 1,583.24 |
| 7. | KC Ag, LLC | 2014-CE-030-VIS | 4,721.90 |
| 8. | Rincon Pacific | 2014-CE-024-SAL 2014-CE-025-SAL | 7,267.46 |
| 9. | San Joaquin Tomato Growers | 93-CE-038-VIS | 100,000.00 |
| 10. | Sandhu Brothers | 2012-CE-010-VIS | 5,142.64 |
| 11. | Sandhu Brothers | 2012-CE-010-VIS | 2,571.32 |
| 12. | Sandhu Brothers | 2012-CE-010-VIS | 42.00 |
| 13. | Santa Paula Berry Farms | 2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL | 14,028.66 |
| 14. | Sun Pacific Farming Co-op | 2014-CE-007-VIS | 3,681.22 |
| 15. | Suncoast Nursery | 2014-CE-028-SAL | 7,866.57 |
| 16. | T-Y Nursery | 2014-CE-021-SAL | 15,000.00 |
| 17. | UFW | 2013-CL-005-SAL | 1,825.04 |
| 18. | Vasvision Berry Farms | 2013-CE-041-SAL | 191.67 |

| No. | Case Name | Case No. | Deposits |
|------------|----------------------------|---|---------------------|
| 19. | Ventura Terra Garden, Inc. | 2015-CE-001-SAL 2015-CE-002-SAL 2015-CE-052-SAL | 2,632.82 |
| | TOTAL | | \$467,210.81 |

DISBURSEMENTS

| No. | Respondent Name | Case No. | Total Net Amount Issued |
|------------|---|---|--------------------------------|
| 1. | Santa Paula Berry Farms | 2013-CE-062-SAL 2013-CE-063-SAL 2013-CE-064-SAL 2013-CE-065-SAL 2013-CE-066-SAL | \$ 8,948.59 |
| 2. | KC Ag, LLC | 2014-CE-030-VIS | 4,721.90 |
| 3. | Eclipse Berry Farms | 2014-CE-042-SAL | 7,406.25 |
| 4. | T-Y Nursery | 2014-CE-021-SAL | 15,000.00 |
| 5. | Rincon Pacific | 2014-CE-024-SAL 2014-CE-025-SAL | 5,860.04 |
| 6. | Vasvision Berry Farms | 2013-CE-041-SAL | 191.67 |
| 7. | Suncoast Nursery | 2014-CE-028-SAL | 7,866.57 |
| 8. | UFW | 2013-CL-005-SAL | 290.54 |
| 9. | George Amaral | 2012-CE-019-SAL 2012-CE-023-SAL | 1,583.24 |
| 10. | Sun Pacific Farming Co-op | 2014-CE-007-VIS | 3,681.22 |
| 11. | Premiere Raspberries | 2015-CE-017-SAL 2015-CE-018-SAL | 2,792.77 |
| 12. | Gurinder S. Sandhu dba Sandhu Brothers Poultry and Farming, a sole proprietorship | 2012-CE-010-VIS | 7,755.96 |
| 13. | Boavista Harvest | 2015-CE-011-SAL | 457.25 |
| 14. | RBI Packing | 2013-CE-002-VIS | 644.09 |
| 15. | Silent Springs | 2013-CE-059-SAL | 2,770.92 |
| | TOTAL | | \$69,971.01 |

VII. Agricultural Employee Relief Fund

Effective January 1, 2002, pursuant to Labor Code section 1161, the Agricultural Employee Relief Fund (AERF or Fund), establishes a trust fund, administered by the Board, to pay agricultural employees entitled to monetary relief under the Act. California Code of Regulations, title 8, section 20299, governs the administration of the AERF.

In fiscal year 2015-2016, no cases were referred to the Fund and there were no disbursements from the Fund. As of June 30, 2016, \$23,468.65 remains in the Fund for distribution.

VIII. Mandatory Mediation and Conciliation

The Act authorizes certified labor organizations or employers to petition the Board for an order directing the parties to “mandatory mediation and conciliation” of disputed issues. If supporting documents establish the existence of certain statutory prerequisites, the Board will order the parties to participate in the mandatory mediation and conciliation process, under which a mediator is appointed to assist the parties in resolving their outstanding issues, and failing such resolution, to issue a determination as to how the issues should be resolved, with the mediator’s determination reviewable by the Board, and the Board’s decision reviewable by the courts.

During fiscal year 2015-2016, the ALRB did not receive any requests for referral to mandatory mediation and conciliation. The Board continued to process three MMC petitions received in prior years in Arnaudo Brothers, Inc., Ace Tomato Company, Inc., and Gerawan Farming, Inc.

A brief summary of the three MMC petitions:

On April 23, 2015, the Board issued its decision in Arnaudo Brothers, Inc., 2013-MMC-001 dismissing the Employer’s petition for review and ordering the mediator’s report in effect. On May 29, 2015, Arnaudo filed its petition for review of 41 ALRB No. 3. On October 30, 2015, the court dismissed the petition as untimely and all litigation in this matter has been completed.

On August 24, 2012, Ace Tomato Company (Ace) filed a petition for writ of review in the Fifth District Court of Appeal seeking appellate review of the Board’s decision in 38 ALRB No. 6 and a stay of that decision. On March 25, 2016, the employer filed a notice of settlement and request to dismiss the appeal in view of a global settlement. On March 29, 2016, the court granted the petitioner’s request for dismissal of the petition and all litigation in this matter has been completed.

On December 16, 2013, Gerawan Farming, Inc. filed a petition for writ of review and stay of the Board's decision in 39 ALRB No. 17 in the Fifth District Court of Appeal, in which the Board approved a collective bargaining agreement reached through the Mandatory Mediation and Conciliation process. 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 ALRB and the UFW filed separate petitions for review with the California Supreme Court. Both petitions were granted, briefing is in progress and oral argument and a decision by the Court is pending.

IX. Outreach Activities

The ALRB is actively engaged in conducting ongoing outreach activities, designed to educate farmworkers, labor organizations and agricultural employers about their rights and obligations under the Act, and the role of the ALRB.

The General Counsel staff attended various events throughout California with the goal of informing workers about their rights under the ALRA and the role of the ALRB in enforcing such rights. ALRB staff distributed outreach materials, made presentations, answered workers' questions, and collaborated with other agencies in order to educate farmworkers and others who serve the farmworker community about the availability of services from the ALRB. Highlights of outreach activities include:

- Multiple community fairs and outreach events attended by an estimated 1,335 farmworkers, including *Día del Trabajador Agrícola* (Day of the Farm Worker) in Greenfield, California.
- Attendance at a week-long event at *La Semana de los Derechos Laborales* ("Labor Rights Week") which was sponsored by the Mexican Consulate that takes place throughout the State of California.
- Continued partnership with AgSafe: ALRB appeared at various AgSafe events as one of the primary presenters and conducted numerous trainings in Spanish and English throughout California. AgSafe is a network of farmers, farm labor contractors, packers, shippers and processors. Educational classes provided information and resources to employers, supervisors and foremen, needed to prevent injuries, illnesses and fatalities. ALRB staff reached approximately 350 employer representatives through AgSafe and other employer outreach.
- Participation in a radio program called Radio Indígena on multiple occasions, broadcasting to thousands of farmworkers. The program focused on the rights of farmworkers to form or decertify unions and to participate in protected concerted activities.
- Attendance at a Forum on Labor Rights, together with the Mexican Consulate and Santa Maria Food Bank to provide information to farmworkers and employers.