

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 7, 2018

Time: 10:11 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall
Staff Present: Executive Secretary Avila-Gomez; Chief Board Counsel Ratshin;
Board Counsel Heyck and Coffey; and AGPA Massie

Others Present: ALRB: General Counsel Montgomery; Division of Administrative
Services Chief Rodrigues; Elcy Lemus, Excel Interpreting and
Translating

OPEN SESSION

1. Approval of Minutes: Board approved 3-0 the minutes of June 26, 2018.

2. Public Comment: None.

3. Chairwoman's Report:

Chairwoman Shiroma welcomed Ed Hass, her new Associate Governmental Program Analyst, who will start on Monday, September 10th. Mr. Hass has a Bachelor of Arts degree in Journalism from Rutgers University. He has been working for the Department of General Services in the FISCAL Business and Support Units for the past several years and has many years of experience as a technical writer.

According to Rural Migration News, between 2014 and 2016 the number of farmworkers had gone up in California from approximately 400,000 full time workers in 2014 to a little over 800,000 farm workers in 2016. More recently, that number has risen to 1 million. The number of farms has increased from 76,000 in 2014 to more than 77,000 in 2017. It will be interesting to see how cannabis legalization affects this number. In an effort to retain farm workers, some farmers are looking at year-round work to retain workers. There is a shortage of farmworkers in California as well as across the nation. This includes dairy, vegetable and non-farming operations. Top agricultural counties include Kern, Tulare, Fresno, and Monterey.

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 June 26, 2018, there have been five notices of intent to take access (NA's) filed.

1. On June 27, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 (UFCW5) at Pacific Reserve Nursery, LLC in Salinas, CA—a cannabis industry employer.

Case Name: Pacific Reserve Nursery, LLC
Case Number: 2018-NA-016-SAL
Charging Party: United Food and Commercial Workers Union, Local 5

2. On July 26, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 (UFCW5) at Faith & Family Farms, LLC in Salinas, CA—a cannabis industry employer.

Case Name: Faith & Family Farms, LLC
Case Number: 2018-NA-017-SAL
Charging Party: United Food and Commercial Workers Union, Local 5

3. On August 9, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 (UFCW5) at Monterey Botanicals, LLC in Salinas, CA—a cannabis industry employer.

Case Name: Monterey Botanicals, LLC
Case Number: 2018-NA-018-SAL
Charging Party: United Food and Commercial Workers Union, Local 5

4. On August 10, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 (UFCW5) at Fuji Fire Flowers, LLC in Salinas, CA—a cannabis industry employer.

Case Name: Fuji Fire Flowers, LLC
Case Number: 2018-NA-019-SAL
Charging Party: United Food and Commercial Workers Union, Local 5

5. On August 15, 2018, an NA was filed by United Farm Workers of America at Sweetwoods Farm Inc. dba Red Rooster Co. in Firebaugh, CA—a tomato farming employer.

Case Name: Sweetwoods Farm Inc. dba Red Rooster Co.

Case Number: 2018-NA-001-VIS

Charging Party: United Farm Workers of America

NOTICE OF INTENT TO ORGANIZE (NO)

Since the Board's last meeting on June 26, 2018, there have been no notices of intent to organize filed.

ELECTION PETITIONS FILED

Since the Board's last meeting on June 26, 2018, there have been no elections held.

COMPLAINT REPORT

Since the Board's last meeting on June 26, 2018, the General Counsel has issued one complaint.

An amended consolidated complaint was filed in Golden West Veg, Inc., Case No. 2016-CE-028-SAL, adding Respondent Cobian Labor Services, Inc., and consolidating Charge 2016-CE-038-SAL.

COMPLAINTS SETTLED PRIOR TO HEARING

KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al. settled on August 14, 2018.

COMPLAINTS WITHDRAWN

Lagomarsino Group, Case No. 2017-CE-009-VIS was withdrawn on July 17, 2018.

CASE MANAGEMENT, PREHEARING AND SETTLEMENT CONFERENCES

CASE MANAGEMENT CONFERENCES

- July 2, 2018 – *WMJ Farms, Inc.*, Case No. 2016-CE-012-VIS
- July 2, 2018 – David Abreu Vineyard, Case No. 2017-CE-026-SAL

- July 9, 2018 – KR Thermal Middleton, LLC, Case Nos. 2017-CE-012-VIS, et al.
- August 13, 2018 – Channel Islands Berry Farms, Case No. 2016-CE-037-SAL

PREHEARING CONFERENCES

- July 23, 2018 – KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al.
- July 30, 2018 – Golden West Veg Inc., Case No. 2016-CE-028-SAL
- August 13, 2018 – David Abreu Vineyard, Case No. 2017-CE-026-SAL

SETTLEMENT CONFERENCES

- July 30, 2018 – KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al.
- August 2, 2018 – KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al.
- August 6, 2018 – KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al.
- August 7, 2018 – KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al.
- August 8, 2018 – KR Thermal Middleton, LLC, Case No. 2017-CE-012-VIS, et al.
- August 9, 2018 – Golden West Veg. Inc., Case No. 2016-CE-028-SAL
- August 16, 2018 – Channel Islands Berry Farms, Case No. 2016-CE-037-SAL

HEARINGS HELD

- No hearing were conducted for this time period.

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

- *Fowler Packing Company*, Case No. 2016-CE-003-VIS – CMC held on Monday, February 26, 2018; PHC held on Monday, March 12, 2018 and Tuesday, April 10, 2018; Hearing finished on Monday, April 16, 2018; Post-hearing briefs filed on Friday, May 25, 2018; Pending ALJ Decision.
- *Gerawan Farming Inc.*, Case No. 2015-CE-023-VIS, et al., CMC's held on Monday, August 14, 2017 and Monday, February 26, 2018; PHC held on Wednesday, May 9, 2018; Hearing held on June 20, 2018. Post-hearing briefs filed on Monday, July 30, 2018; Pending ALJ decision.

ALJ/IHE DECISIONS ISSUED

- *GJ Farms, Inc.*, Case No. 2017-CE-020-SAL – ALJ granted Motion to Deem Allegations in Complaint Admitted and Motion for Summary Judgment on 8/22/2018.
- *Gerawan Farming, Inc.*, Case No. 2015-007-VIS, et al. – ALJ Decision issued 8/27/2018. Exceptions due 9/20/18 and replies due 10/4/18. The ALJ found that Gerawan Farming, Inc. violated sections 1153(a), (c), and (d) of the Agricultural Labor Relations Act (ALRA) by failing to recall four agricultural employees because of their activity on behalf of the United Farm Workers of America and, in one of the cases, because of testimony in a prior ALRB proceeding.
- *Monterey Mushrooms*, Case No. 2016-CE-032-SAL – ALJ Decision issued 8/28/2018. Exceptions due 9/20/18 and replies due 10/4/18. The ALJ found that Monterey Mushrooms, Inc. violated section 1153 (a) of the Agricultural Labor Relations Act (ALRA) by prohibiting its employees from engaging in protected concerted activity, protected under section 1152 of the Act. The protected concerted activity involved discussing terms and conditions of employment, including use of new equipment and its effect on employees' wages.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

- *Arnaudo Brothers, LP, and Arnaudo Brothers, Inc.*, 2015-CE-006-VIS. 2017-CE-003-VIS – ALJ Decision issued 3/29/18; Exceptions received 5/7/18; Reply received 5/23/18; Board Decision issued 8/16/18. Appeal Date 9/17/18.

CASES PENDING BOARD DECISION OR ACTION

- *GJ Farms, Inc.*, 2017-CE-020-SAL; ALJ Decision issued 8/22/18.
- *Gerawan Farming, Inc.*, 2013-CE-011-VIS, et al.; ALJ Decision issued 5/29/18; Exceptions received 6/21/18. Reply received 7/13/18.
- *Jacob Diepersloot, Individually and dba JD Farms; Jacobo D. Farms; JD Farms Management*, 2015-CE-027-VIS; ALJ Decision issued 6/21/18. Exceptions received 7/23/18. Reply received 8/6/18.
- *Monterey Mushrooms, Inc.*, 2016-CE-032-SAL, ALJ Decision issued 8/28/18; Exceptions due 9/20/18. Replies due 10/4/18.

BOARD DECISION OR ACTION:

Since the Board's last meeting on June 26, 2018, four Board Decisions have issued.

- ***United Farm Workers of America (Lopez) (2018) 44 ALRB No. 6.***

On July 24, 2018, the Agricultural Labor Relations Board (Board) issued its decision and order in *United Farm Workers of America (Lopez)*, Case No. 2015-CL-006-VIS.

Background

On April 28, 2014, Administrative Law Judge Mark R. Soble ("ALJ") issued a decision finding that Respondent United Farm Workers of America ("UFW") violated Section 1154(a)(1) of the Agricultural Labor Relations Act ("ALRA" or "Act") by directing or misleading hotel security into excluding anti-UFW agricultural workers from an Agricultural Labor Relations Board ("ALRB" or "Board") public hearing. The ALJ ordered the UFW to cease and desist from violating the Act, to post a notice at all of its offices in the San Joaquin Valley for a sixty-day period, to post a notice at Gerawan Farming, Inc. ("Gerawan") for a sixty-day period, and also to cooperate with the Visalia Region to arrange for notice mailing and notice reading to crews employed by the UFW during the time period of September 1, 2015 to September 16, 2015. The ALJ also ordered training on the Act for all San Joaquin-Valley based UFW coordinators, organizers and their immediate supervisors.

Board Decision and Order

The Board affirmed the ALJ's findings of fact, in part, and affirmed the ALJ's legal conclusion that the UFW violated the Act by directing or misleading hotel security into temporarily excluding anti-UFW workers from engaging in protected, concerted activity at a public hearing held by the ALRB. The Board found that that the blue-shirted, anti-UFW workers engaged in concerted, protected activity. The Board also

affirmed the ALJ's credibility determinations. The Board did not adopt the ALJ's conclusion that there was widespread dissemination of information, whether by word of mouth or through smart phones or online platforms, among Gerawan employees regarding the temporary exclusion of the blue-shirted workers. Additionally, the Board clarified the ALJ's order to state that the mailing and notice readings be provided to crews employed by Gerawan, and not Respondent, UFW. Finally, the Board overturned the ALJ's order for training for all San Joaquin-Valley based UFW coordinators, organizers, and their immediate supervisors, and denied a media noticing remedy requested by the charging party.

- ***Arnaudo Brothers (2018) 44 ALRB No. 7***

On August 16, 2018, the Agricultural Labor Relations Board issued its decision in *Arnaudo Brothers*, Case Nos. 2015-CE-006-VIS, et al.

Background

On March 29, 2018 Administrative Law Judge Mary Miller Cracraft (the "ALJ") issued a decision finding that respondents Arnaudo Brothers, LP and Arnaudo Brothers, Inc. ("Arnaudo") unlawfully failed to bargain with charging party United Farm Workers of America (the "UFW") over wage rates for a mandatory mediation and conciliation ("MMC") contract in 2014-2015 and over the discretionary aspects of Arnaudo's implementation of an employee medical plan in 2016. The ALJ did not order monetary remedies for either violation. The General Counsel of the ALRB filed exceptions arguing that makewhole should have been awarded for both violations.

Board Decision and Order

The Board affirmed in part and reversed in part the ALJ's recommended remedy. With respect to the 2014-2015 violation, the Board found that the General Counsel's complaint conceded that Arnaudo paid all wages required by the MMC contract, which overlapped with the makewhole period and, thus, precluded a makewhole award. The Board also found that, under the rationale of *Gerawan Farming, Inc. (2018) 43 ALRB No. 1*, bargaining makewhole could not be awarded because awarding makewhole within the effective dates of an MMC contract would result in a punitive remedy. With respect to the 2016 medical plan implementation, the Board held that the proper measure of the monetary remedy for a discrete unilateral change is the difference between the affected employees' earnings and benefits under the unilaterally changed terms of employment and the earnings and benefits they would have received absent those changes, rejecting the General Counsel's argument that a "bargaining makewhole" measure should be applied. The Board held that, because there was not an adequate record to support the ALJ's conclusion that employees could not have suffered economic losses resulting from the implementation of the

medical plan, a monetary remedy should be included and the amount of economic losses, if any, should be determined in compliance proceedings.

- ***Premiere Raspberries, LLC (2018) 44 ALRB No. 8***

On August 27, 2018, the Agricultural Labor Relations Board issued its decision in *Premiere Raspberries, LLC*, Case No. 2018-MMC-02.

Background

On March 8, 2018, the United Farm Workers of America (“UFW”), the certified bargaining representative of the agricultural employees of Premiere Raspberries, LLC (“Premiere”), filed a declaration with the Agricultural Labor Relations Board (“Board”) pursuant to Labor Code section 1164 et seq. and Board Regulation section 20400, requesting that the Board issue an order directing the parties to mandatory mediation and conciliation (“MMC”) of their issues. The Board ordered the parties to MMC in its decision, *Premiere Raspberries, LLC (2018) 44 ALRB No. 3*. In this decision, the Board also denied Premiere’s request for an order staying the MMC process pending judicial review of the certification based on its technical refusal to bargain with the UFW. Labor Code section 1158 specifically states that the filing of a petition for review in a Unfair Labor Practice case to obtain indirect review of a Board certification in a representation proceeding (such as in the case of a technical refusal to bargain) “shall not be grounds for a stay of proceedings conducted pursuant to” the MMC statute.

Board Decision and Order

The mediator in the MMC case filed his report with the Board on August 11, 2018. Premiere’s counsel attended the MMC session which was held on July 9, 2018 solely for the purpose of stating her objection to the MMC process. Premiere did not present proposals or counterproposals or any testimony or evidence in support of any bargaining position. The mediator accepted the UFW’s proposals in their entirety and recommended that they comprise a collective bargaining agreement with a term of three years. Premiere filed a petition for review of the mediator’s report with the Board. The Board dismissed the petition for review, finding that Premiere had not established that any of the statutory grounds exist for the Board to grant review of the Mediator’s Report. The mediator’s refusal to stay MMC was not arbitrary or capricious under Labor Code 1158, and Premiere’s decision not to avail itself of the opportunity to participate in MMC did not support a violation of due process. The Board ordered that the Mediator’s Report take immediate effect as a final order of the Board.

- ***Premiere Raspberries, LLC (2018) 44 ALRB No. 9***

On August 29, 2018, the Agricultural Labor Relations Board (Board) issued its decision and order in *Premiere Raspberries, LLC*, Case No. 2018-CE-004-SAL.

Background

Following a representation petition filed by the United Farm Workers of America (UFW) to represent workers at Premiere Raspberries, LLC (Premiere), the Agricultural Labor Relations Board (ALRB or Board) held an election on August 9, 2017. The ballot count showed that a majority of employees voted in favor of representation by the UFW. Premiere filed four election objections. The Board dismissed all four objections in *Premiere Raspberries, LLC* (2017) 43 ALRB No. 2. Premiere thereafter requested reconsideration of that decision, which the Board denied in *Premiere Raspberries, LLC* (2017) ALRB Admin. Order No. 2017-20. After the Board certified the UFW as the exclusive bargaining representative, the UFW requested bargaining with Premiere. Premiere responded that it was engaging in a technical refusal to bargain in order to obtain judicial review of the Board's Decision in *Premiere Raspberries*, supra, 43 ALRB No. 2.

The ALRB's General Counsel issued a complaint alleging that Premiere refused to bargain with the UFW in violation of the Agricultural Labor Relations Act (ALRA or Act). The parties entered into a Stipulation of Facts and agreed to waive their rights to a hearing provided by section 1160.2 of the Act.

Board Decision and Order

The Board found that Premiere had not shown any new evidence or demonstrated "extraordinary circumstances" justifying reconsideration of the earlier representation case. The Board found that Premiere's admitted refusal to bargain with the UFW was a violation of Labor Code section 1153, subdivisions (e) and (a). The Board ordered bargaining makewhole as a remedy for the violation, finding that while the record contained no evidence that Premiere was seeking judicial review in bad faith, Premiere's litigation posture was unreasonable.

ADMINISTRATIVE ORDERS

- Admin Order No. 2018-06: *Gerawan Farming, Inc.*, 2015-CE-014-VIS, et al. On June 28, 2018, Order Denying Gerawan Farming, Inc.'s Application for Special Permission to Appeal ALJ's Ruling
- Admin Order No. 2018-07: *Premiere Raspberries, LLC* 2018-CE-004-SAL. On July 10, 2018, Order Granting Parties' Motion to Submit Stipulated Facts; Order Setting Due Date for Briefs

- Admin Order No. 2018-08: *T.T. Miyasaka, Inc.* 2016-CE-011-SAL. On July 10, 2018, Order Granting Joint Motion to Amend Notice to Agricultural Employees
- Admin Order No. 2018-09: *Premiere Raspberries, LLC* 2016-CE-010-SAL. On August 2, 2018, Order Granting Joint Motion to Amend Notice to Agricultural Employees
- Admin Order No. 2018-10: *Palma's Produce, Inc.* 2017-CE-081-SAL, et al. On August 23, 2018, Order Setting Time for Response to General Counsel's Request for Board Action to Enforce Subpoena Duces Tecum
- Admin Order No. 2018-10: *Palma's Produce, Inc.* 2017-CE-081-SAL. On September 5, 2018, Granting General Counsel's Request for Board Action to Enforce Subpoena Duces Tecum

CASES READY OR RELEASED FOR COMPLIANCE

- *Arnaudo Brothers, LP and Arnaudo Brothers, Inc.*, 40 ALRB No. 3, 41 ALRB No. 6, Case No. 2012-CE-030-VIS. On April 4, 2014, the Board issued 40 ALRB No. 3 and on September 10, 2015 issued 41 ALRB No. 6. Both decisions were reviewed by California's Fifth District Court of Appeals (Fifth District). On August 7, 2017 the Fifth District issued a decision in *Arnaudo Brothers, LP v. ALRB (Arnaudo Brothers)* wherein it affirmed 40 ALRB No. 3 and affirmed in part and reversed in part 41 ALRB No. 6. In September 2017, the ALRB sought review of the Fifth District's decision to reverse the Board's remedial order awarding make-whole relief and the California Supreme Court (Supreme Court) granted reviewed pending its decision in *Gerawan Farming, Inc. v. ALRB* and *Tri-Fanucchi Farms v. ALRB*. The Supreme Court transferred *Arnaudo Brothers* back to the Fifth District to reconsider its opinion in light of the Supreme Court's opinion in *Tri-Fanucchi Farms*. On July 5, 2018, the Fifth District issued the remittitur making this matter fully resolved, therefore, it was released for compliance on July 26, 2018.
- *United Farm Workers of America (Lopez)* Case No. 2015-CL-006-VIS. The Board decision issued its decision on July 24, 2018. Motion for Reconsideration due date was August 7, 2018. No writ of review was filed. Therefore, the matter is ready to be released to the Regional Office for compliance.

MANDATORY MEDIATION AND CONCILIATION (MMC)

No new requests for referral to MMC.

CASE CALENDARED FOR FUTURE DATES

1. *Golden West Veg. Inc.*, Case No. 2016-CE-028-SAL Second prehearing conference scheduled for October 10, 2018. Hearing set for October 30, 2018.
2. *West Coast Berry Farms, LLC* Case No. 2016-CE-002 Case Management Conference scheduled for September 17, 2018; Prehearing conference scheduled for October 15, 2018; Hearing set for November 13, 2018.
3. *Channel Island Berry Farms*, Case No. 2016-CE-037-SAL Prehearing conference scheduled for September 24, 2018; Hearing set for October 16, 2018.
4. *Catalinos Berry Farm, LLC*. Case No. 2016-CE-044 Case Management Conference originally scheduled for August 6, 2018 was postponed due to family issues of ALJ. Dates to be rescheduled.
5. *Premiere Raspberries, LLC* Case No. 2018-CE-012-SAL Case Management Conference scheduled for September 10, 2018; Prehearing conference scheduled for October 15, 2018; Hearing set for November 13, 2018.
6. *WMJ Farms* Case No. 2016-CE-012-VIS Prehearing conference scheduled for September 24, 2018; Hearing set for October 16, 2018.
7. *David Abreu Vineyard* Case No. 2017-CE-024 Hearing set for September 18, 2018.

ALRB BOARD LITIGATION

Petitions for Writ of Review of Unfair Labor Practice Decisions

► ***Gerawan Farming, Inc. v. ALRB, et al.*, California Supreme Court, Case No. S249865**

Summary: Petition for review of appellate court's opinion affirming in part and reversing in part the Board's unfair labor practice findings in 42 ALRB No. 1, vacating the Board's order dismissing a decertification petition and setting aside an election, and remanding the matter to the Board to reconsider its order setting aside the decertification election.

Status: The Board and United Farm Workers of America filed separate petitions for review in the California Supreme Court on July 9. Gerawan filed a combined answer to the petitions on July 30, and the Board and United Farm

Workers filed separate replies on August 9. Also, Silvia Lopez, the decertification petitioner, submitted two letters to the Court, on August 7 and 15, requesting it deny the petitions for review. The United Food and Commercial Workers submitted a letter to the Court on August 22 in support of the UFW's petition for review, and Service Employees International Union submitted a letter to the Court on August 24 in support of the Board's petition for review. On August 24, the Court issued an order extending the time for granting or denying review to October 5.

► ***Gerawan Farming, Inc. v. ALRB, Fifth District Court of Appeal, Case No. F073769***

Summary: Petition for writ of mandate challenging Board's decision in 42 ALRB No. 1 dismissing a decertification petition and setting aside the decertification election.

Status: Proceedings in this case were stayed by the court pending a decision in *Gerawan Farming, Inc. v. ALRB*, Case No. F073720. On July 25, 2018, Gerawan filed a motion to lift the stay and issue a peremptory writ directing the Board to count the ballots cast in the decertification election. Later on July 25, the court issued an order denying the motion and further summarily denying Gerawan's petition for writ of mandate. That order was final upon issuance, and Gerawan did not file a petition for review in the California Supreme Court. This matter now is concluded.

► ***Lopez v. ALRB, Fifth District Court of Appeal, Case No. F073730***

Summary: Petition for writ of mandate challenging Board's decision in 42 ALRB No. 1 dismissing a decertification petition and setting aside the decertification election.

Status: Proceedings in this case were stayed by the court pending a decision in *Gerawan Farming, Inc. v. ALRB*, Case No. F073720. On July 6, 2018, Silvia Lopez filed a motion to lift the stay and issue a peremptory writ directing the Board to count the ballots cast in the decertification election. The Board filed an opposition to the motion on July 19, and Lopez filed a reply on July 25. Later on July 25, the court issued an order denying the motion and further summarily denying Lopez's petition for writ of mandate. That order was final upon issuance, and Lopez did not file a petition for review in the California Supreme Court. This matter now is concluded.

► ***P & M Vanderpoel Dairy v. ALRB, Fifth District Court of Appeal, Case No. F077513***

Summary: Petition for writ of review of the Board's decision in 44 ALRB No. 4, involving an award of backpay to an unlawfully terminated employee.

Status: Vanderpoel filed its opening brief on July 20. The Board filed its respondent's brief on August 24. Vanderpoel's reply brief is due September 18.

► ***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 opening brief on June 19. The Board and United Farm Workers filed separate opposition briefs on August 15. Gerawan's reply brief is due September 10.

► ***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: The court issued an opinion on May 4 affirming the Board's rejection of the employer's disclaimer defense to the refusal to bargain charge, and further affirming the Board's award of bargaining makewhole relief. The court did not certify for publication its discussion affirming the Board's makewhole award. On May 24, the Board requested that a portion of the unpublished part of the opinion be certified for publication. On May 29, the court issued an order denying the Board's publication request, and the court transmitted the request to the California Supreme Court that same day. The court issued its remittitur on July 5 returning this case to the Board.

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 reply brief in support of its petition for writ of certiorari on July 3. The Court has distributed this matter for conference on September 24, 2018.

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

Summary: Proceedings on remand from the California Supreme Court (*Gerawan Farming, Inc. v. ALRB* (2017) 3 Cal.5th 1118) to address certain constitutional and other claims asserted by Gerawan which were unresolved in prior proceedings in this case.

Status: On August 1, the court requested supplemental briefing from the parties concerning Gerawan's claim that retroactive wage increases set forth in the mandatory mediation and conciliation contract ordered into effect by the Board violate the Contract Clause of the United States and California Constitutions. Gerawan filed its supplemental brief on August 16. The Board filed its supplemental brief on August 31, and the UFW filed a supplemental brief on September 4. On August 8, Gerawan filed a motion for leave to file a supplemental brief alleging that an agency fee provision included in the mandatory mediation and conciliation contract are unconstitutional in light of the United States Supreme Court's recent opinion in *Janus v. AFSCME, Council 31* (2018) 138 S.Ct. 2448. On August 15, the court issued an order denying Gerawan's motion. On August 14, the court issued an oral argument notice stating the matter would be heard on its October calendar. All parties requested oral argument.

► ***Premiere Raspberries, LLC v. ALRB, Sixth District Court of Appeal, Case No. H045909 [Monterey County Superior Court, Case No. 18CV001447]***

Summary: Appeal from superior court judgment dismissing employer's 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: On July 5, the Board filed an opposition to Premiere's petition for writ of supersedeas seeking to stay pending mandatory mediation and conciliation proceedings between it and the United Farm Workers. The court issued an order denying the petition later on July 5. In the superior court, the Board filed a memorandum of costs on June 27, which Premiere did not oppose. The Board recovered filing costs from Premiere and transmitted those to the superior court.

5. General Counsel's Report

General Counsel Montgomery reported on settlements. The first complaint out of the Indio office involved date palm growers KR Thermal Middleton. This matter settled one week before hearing. Four workers claimed they were terminated after complaining about the safety of the baskets used to pick the fruit. The settlement was for \$38,885 plus an unconditional offer of reinstatement. Supervisor training and noticing will take place in late September.

In Premiere Raspberries LLC, multiple charges were filed involving improper union statements, unlawful surveillance, etc. The matter was settled shortly before hearing. The grower reached an agreement to not violate the law including readings, mailings and posting. No backpay was owed. Two hundred forty (240) employees were noticed on August 9th and supervisor training occurred on August 21st.

Compliance Remedies: A number of readings, mailings and noticing took place since the last Board meeting, including: Robert Johnson Farms in Madera noticing to 136 workers and mailing to 756 workers; Premiere Raspberries noticing to 240 employees in August. Noticing and posting at KR Thermal Middleton is scheduled for September 28th.

Staffing: Outreach Coordinator Santiago Ventura started on August 1st and is based in Visalia. Mr. Ventura has visited all offices except Santa Rosa. He participated in outreach at the border, events with the Mexican Consulate in Visalia and outreach in Oxnard. Ghada Yasin, who is currently working for the United Nations in Budapest, was hired to fill the attorney vacancy in the Santa Rosa office and will be starting in October. Karen Santana is assuming the field examiner position in Santa Rosa. Ms. Santana was the Senior Legal Typist for the office. We are currently recruiting for a Senior Legal Typist in Santa Rosa, an Attorney and Field Examiner in Visalia, and a Senior Legal Typist and Staff Services Analyst in Salinas.

Outreach: The regions have been busy with various events throughout the summer. The General Counsel staff participated in Labor Rights Week events in Sacramento, Oxnard, San Jose and Fresno. Staff attended an event in Fresno on August 31 in conjunction with the Labor and Workforce Development Agency (LWDA) and other agencies which included a presentation by Dr. Gaspar Rivera Salgado of the UCLA Labor Center. Dr. Rivera Salgado and his team analyzed about 30 different materials from the state labor agencies and conducted focus groups with farmworkers and community organizations to evaluate effectiveness of these outreach materials. They issued a report with these recommendations, which specifically addressed the unique needs of the indigenous farmworker community. General Counsel Montgomery attended a meeting at the Mexican Consulate with local government and nonprofit representatives on July 26th to collaborate regarding farmworker services in the Sacramento valley. Kenia Acevedo participated in events in Salinas and Greenfield in Monterey County where approximately 250 farmworkers were served.

6. Chief of Administrative Services

Chief Rodrigues submitted her report prior to the meeting. There are many new projects resulting from the move of accounting to the Contracted Fiscal Services (CFS) Unit of Department of General Services. Policies and procedures are being developed. Work continues on month-end and year-end closing. Employment Development Department and Department of Finance are helping. Next week we will be able to close. CFS worked with accounts receivable. Not been well kept under fiscal. Bills have been paid but are not documented in the system.

The department has 10 vacancies which include 2 Board member vacancies and the Chairwoman's analyst position that will be filled on Monday. Many commitments have been made. The Business Services Officer position has been filled. In Human Resources, Krishna Rodriguez will start on October 1st. Interviews are being scheduled to fill the budget analyst position. IT Analyst Frank Alejandro is leaving. There are three candidates for his position. Chief Rodrigues expects to be making a commitment by next week. Stephen Wicklund will be coming in 2 days week per week until a new IT person starts.

7. Regulations – No changes since last meeting.

8. Legislation

► Assembly Bill No. 2751 [Stone (D)]

Summary: This bill requires the Agricultural Labor Relations Board to process to final Board order all decisions concerning monetary remedies to employees within one year of a Board order finding liability for such an award. This bill also requires parties to

implement contracts ordered into effect through mandatory mediation and conciliation immediately upon issuance of a Board order, and allows the Board or a party to file an action to enforce a Board order in superior court even if the other party is seeking judicial review of the Board order. A court may not stay implementation of a mandatory mediation and conciliation contract unless it finds a party has demonstrated (1) it will suffer irreparable harm, and (2) a likelihood of success on the merits of a pending judicial challenge. Finally, this bill requires an employer and labor organization to implement the terms of a Board order in mandatory mediation and conciliation proceedings immediately upon the conclusion of judicial review proceedings where the Board's order is affirmed and the terms of the order have not yet been implemented by the parties. This bill further allows a party to request supplemental mandatory mediation and conciliation proceedings where the contract ordered into effect by the Board had a duration provision that has since expired during the course of judicial review proceedings or other provisions that have become outdated or moot during review proceedings.

Status: Passed by the Legislature on August 29, 2018; enrolled on August 31; Governor has until September 30 to veto. Will go into effect January 1, 2019.

9. Personnel

See above reports.

10. Announcements

None.

The public meeting adjourned at 11:01 a.m.