

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

January 30, 2019

Time: 10:03 a.m.

Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Hall

Staff Present: Executive Secretary Avila-Gomez; Principal ALJ Soble; Chief Board Counsel Ratshin; Board Counsel Heyck, Inciardi and Coffey; AGPAs Hass and Massie

Others Present: ALRB: General Counsel Montgomery; Assistant General Counsel Shawver; Regional Director Herrera; Division of Administrative Services Chief Rodrigues; Ann Veronica Morgan, Excel Interpreting and Translating

OPEN SESSION

- 1. Approval of Minutes:** Board approved 3-0 the minutes of September 7, 2018.
- 2. Public Comment:** None.
- 3. Chairwoman's Report:**

Chairwoman Shiroma reported the annual Farm Labor Conference at the UC Davis Law School is being planned for April 4-5, 2019. There will be a smaller, research-oriented conference focusing on the NAWS and the data collected on farm workers on Thursday, April 4, 2019. The second day will focus on immigration and labor-related issues.

Ms. Shiroma announced that it was her last day on the Board after 20 years. Ms. Shiroma thanked Governors Davis, Schwarzenegger, Brown and Newsom for their confidence. Governor Newsom has appointed Ms. Shiroma to the Public Utilities Commission where she will start on January 31. Chairwoman Shiroma stated she remained with the Board for over 20 years because it affects real people. The law is unique in that it is the only law of its kind in the United States. It is a strong and essential law that both growers and farmworkers can avail themselves. The law

assists in resolving disputes and provides an alternative method for farmworkers to collect some monies owed them from bankrupt companies.

Ms. Shiroma commended General Counsel Montgomery for her hard work and that of the regional directors who oversee the day-to-day work in the regions.

Members Rivera-Hernandez and Hall expressed their gratitude for Ms. Shiroma's leadership and wished her well.

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

Executive Secretary Avila-Gomez thanked Ms. Shiroma for the time he served with her on the Board.

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Since the Board's last meeting on September 7, 2018, there have been twelve (12) notices of intent to take access (NA's) filed.

- On September 13, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Riverview Farms dba Satsuma Farms in Salinas, CA—a cannabis industry employer.

Case Name: Riverview Farms/DBA-Satsuma Farms

Case Number: 2018-NA-020-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On September 13, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Riverview Farms dba Riverview Farms in Salinas, CA—a cannabis industry employer.

Case Name: Riverview Farms/DBA-Riverview Farms

Case Number: 2018-NA-021-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On October 11, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at MOTU LLC in Soledad CA—a cannabis industry employer.

Case Name: MOTU LLC

Case Number: 2018-NA-022-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On October 11, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Monterey Valley Pride in Salinas, CA—a cannabis industry employer.

Case Name: Monterey Valley Pride

Case Number: 2018-NA-023-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On October 11, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Monterey Ocean Grown in Salinas, CA—a cannabis industry employer.

Case Name: Monterey Ocean Grown

Case Number: 2018-NA-024-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On November 7, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Hands of Faith Association in Salinas, CA –

Case Name: Hands of Faith Association

Case Number: 2018-NA-025-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On November 7, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Ocean Grown Horticulture, Inc. in Salinas, CA – a cannabis industry employer.

Case Name: Ocean Grown Horticulture, Inc.

Case Number: 2018-NA-026-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On November 7, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at VBF Brands, Inc./Von Baron Farms in Salinas, CA – a cannabis industry employer.

Case Name: VBF Brands, Inc./Von Baron Farms

Case Number: 2018-NA-027-SAL

Charging Party: United Food & Commercial Workers Union Local 5

- On November 30, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Wave Rider Nursery, LLC in Salinas, CA – a cannabis industry employer.

Case Name: Wave Rider Nursery, LLC
Case Number: 2018-NA-028-SAL
Charging Party: United Food & Commercial Workers Union Local 5

- On November 30, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at Cypress Manufacturing in Salinas, CA – a cannabis industry employer.

Case Name: Cypress Manufacturing
Case Number: 2018-NA-029-SAL
Charging Party: United Food & Commercial Workers Union Local 5

- On December 26, 2018, an NA was filed by United Food & Commercial Workers Union, Local 5 at L.N.B. Venture Salinas, LLC in Salinas, CA – a cannabis industry employer.

Case Name: L.N.B. Venture Salinas, LLC
Case Number: 2018-NA-030-SAL
Charging Party: United Food & Commercial Workers Union Local 5

- On January 15, 2019, an NA was filed by United Farm Workers of America at The Wonderful Company in Delano, CA – a pistachio and almond grower and manufacturer.

Case Name: The Wonderful Company
Case Number: 2019-NA-001-VIS
Charging Party: United Farm Workers of America

NOTICE OF INTENT TO ORGANIZE (NO)

Since the Board's last meeting on September 7, 2018, there has been two (2) notice of intent to organize filed.

- On January 3, 2019, an NO was filed by Teamsters Local Union 890 at LNB Venture Salinas, LLC in Salinas, CA—a cannabis employer.

Case Name: L.N.B. Venture Salinas, LLC
Case Number: 019-NO-001-SAL
Charging Party: United Food & Commercial Workers Union Local 5

- On January 15, 2019, an NO was filed by United Farm Workers of America at The Wonderful Company in Delano, CA – a pistachio and almond grower and manufacturer.

Case Name: The Wonderful Company
Case Number: 2019-NO-001-VIS
Charging Party: United Farm Workers of America

ELECTION PETITIONS FILED

Since the Board's last meeting on September 7, 2018, there have been no elections held.

COMPLAINT REPORT

Since the Board's last meeting on September 7, 2018, the General Counsel has issued 12 complaints.

1. *Andrew Smith Company* Case No. 2017-CE-011-SAL filed on October 19, 2018. Andrew Smith Company is an agricultural operation that grows, harvests, packs and ships bulk fruits and vegetables, including celery, lettuce, mushrooms, and romaine in Salinas, California. The complaint alleges that the employer committed an unfair labor practice by firing an employee in retaliation for expressing safety concerns at the workplace.
2. *Saticoy Berry Farms, Inc.* Case No. 2017-CE-071-SAL filed on November 28, 2018. Saticoy Berry Farms, Inc. is an agricultural operation that grows and harvests strawberries in Ventura County, California. The complaint alleges that the employer committed an unfair labor practice by discriminating against employees and terminating employment of some for engaging in protected concerted activity.
3. *Wonderful Orchards, LLC* Case No. 2016-CE-023-VIS filed on December 26, 2018. Wonderful Orchards, LLC is an agricultural operation that grows pomegranates, nuts, and citrus in Kern County and other parts of the San Joaquin Valley. The complaint alleges that the employer through its agents, farm labor contractor, Family Ranch Inc. violated the Act when it unlawfully terminated eight employees for engaging in protected concerted activity by complaining about unclean drinking water and the pace of the work demanded of them.
4. *Scarborough Farms, Inc.* Case No. 2017-CE-007-SAL filed on December 28, 2018. Scarborough Farms, Inc. is an agricultural operation that grows and harvests lettuce and other vegetables in Ventura County, California. The complaint alleges that Respondent discriminatorily terminated an employee for engaging in protected concerted activity when she spoke up on behalf of herself and others about working conditions. Complaints included, but were

not limited to, the condition of the work equipment, the lack of water provided to workers, a lack of bathrooms, and the use of pesticides near the work areas.

5. *Planasa, LLC* Case No. 2018-CE-038-SAL filed on December 28, 2018. Planasa, LLC is a Nevada corporation, whose principal place of business in California is in Anderson, California. Planasa specializes in plant research and has two small breeding operations in Watsonville, California, where they test and grow strawberries. The complaint alleges that Respondent unlawfully terminated two employees in violation of the Act for engaging in protected concerted activity after they complained about working conditions and harassment by a supervisor.
6. *UFW (Garcia)* Case No. 2018-CL-003-VIS filed on December 28, 2018. This charge alleges that the UFW violated the Act when it threatened to picket if the employer refused to recognize and bargain with them.
7. *Tissue-Grown Corporation* Case No. 2018-CE-003-SAL et al. filed on December 28, 2018. Tissue Grown Corporation is an agricultural operation that grows and cultivates pistachio and walnut plants in Santa Paula, California. The complaint consolidates four charges where employees allege that Respondent terminated or disciplined them because they engaged in protected concerted activity when they spoke up on behalf of themselves and co-workers about working conditions, including a supervisor's treatment of the workers, his preference for some workers over others, and the fact that he smelled of alcohol at work.
8. *Bogle Vineyards, Inc.* Case No. 2018-CE-044-SAL filed December 28, 2018. Bogle Vineyards, Inc. is an agricultural operation that grows and harvest grapes in Sacramento County, California. The complaint alleges that Respondent committed an unfair labor practice when it terminated four employees because they engaged in protected concerted activity after complaining about unsafe working conditions, such as Bogle's pesticide application process, the lack of clean bathrooms, and the presence of snakes on the property.
9. *Coast King Packing, LLC* Case No. 2018-CE-028-SAL et al. filed December 28, 2018. Coast King Packing, LLC is an agricultural operation that grows and harvests celery and other vegetables. Its main place of business in California is in Oxnard and Salinas, California. The complaint consolidates two charges alleging that employees were retaliated against for engaging in protected concerted activity by complaining about their paychecks and a change that was made to the piece rate.

10. *Reveille Farms, LLC* Case No. 2017-CE-066-SAL filed December 28, 2018. Reveille Farms, LLC is an agricultural operation that grows and harvests beans and almonds in Sacramento County, California. The complaint alleges that Respondent committed an unfair labor practice when its agent, Michel Labor Services, terminated five employees because they engaged in protected concerted activity when they were terminated for complaining about working conditions such as there being no water, shade or bathrooms at their work locations.
11. *Joe Pedro & Sons Dairy* Case No. 2018-CE-004-VIS filed December 31, 2018. Joe Pedro & Sons Dairy is an agricultural operation that engages in dairy production. The principal place of business is located in Visalia, California. The complaint consolidates two charges alleging that employees were decimated against through termination and demotion for their concerted activity of complaining about preferential treatment of some workers by the Supervisor.
12. *Reiter Brothers, Inc.* Case No. 2017-CE-073-SAL filed December 31, 2018. Reiter Brothers Inc. is an agricultural operation that grows and harvest berries in Ventura County, California. The complaint, on behalf of three employees, alleges that Respondent committed an unfair labor practice when it subjected discriminatees to physical threats, a hostile work environment, unwarranted disciplinary tickets, suspensions, prohibited them from speaking to each other in the workplace, and threatened to reassign them to different worksites, among other things because they engaged in protected concerted activity.

COMPLAINTS SETTLED PRIOR TO HEARING

Since our last meeting six complaints settled prior to hearing.

1. *Catalinos Berry Farm, LLC*, Case No. 2016-CE-044-SAL. Informal bilateral settlement agreement was reached 9/7/18.
2. *WMJ Farms, Inc.*, Case No. 2016-CE-012-VIS. Informal settlement agreement was reached 9/18/18.
3. *Golden West Veg.*, Case No. 2016-CE-028-SAL. Informal bilateral settlement agreement was reached 10/1/2018.
4. *Channel Islands Berry Farms*, Case No. 2016-CE-037-SAL. Informal bilateral settlement agreement was reached 9/25/2018.
5. *West Coast Berry Farms*, Case No. 2016-CE-002-SAL. Informal bilateral settlement agreement was reached on 10/29/2018.

6. *Monterey Mushrooms, Inc.*, Case No. 2017-CE-074-SAL. Informal bilateral settlement agreement was reached on 1/28/2019.

COMPLAINTS WITHDRAWN

One complaint withdrawn since last meeting.

- *George Amaral*, Case No. 2017-CE-021-SAL. General Counsel withdrew the complaint on 10/18/2018. Respondent submitted declaration stating that it is no longer an agricultural employer under the Agricultural Labor Relations Act.

CASE MANAGEMENT, PREHEARING AND SETTLEMENT CONFERENCES

CASE MANAGEMENT CONFERENCES

- Monday, September 10, 2018 @ 1:30 p.m. – Case Management Conference in *Premiere Raspberries, LLC*, Case No. 2016-CE-012-VIS
- Monday, September 17, 2018 @ 9:00 a.m. – Case Management Conference in *West Coast Berry Farms*, Case No. 2016-CE-002-SAL
- Monday, November 19, 2018 @ 1:30 p.m. – Case Management Conference in *Monterey Mushrooms, Inc.*, Case No. 2017-CE-074-SAL
- Monday, November 19, 2018 @ 1:30 p.m. – Case Management Conference in *Andrew Smith Company, LLC*, Case No. 2017-CE-011-SAL
- Wednesday, January 9, 2019 @ 1:30 p.m. – Case Management Conference in *Saticoy Berry Farms*, Case No. 2017-CE-071-SAL et al.
- Tuesday, January 22, 2019 @ 1:30 p.m. – Case Management Conference in *United Farm Workers of America (Garcia)* Case No. 2018-CL-003-VIS

PREHEARING CONFERENCES

- Monday, October 15, 2018 @ 1:30 p.m. – Prehearing Conference in *Premiere Raspberries, LLC*, Case No. 2018-CE-012-SAL
- Friday, January 18, 2019 @ 1:30 p.m. – Prehearing Conference in *Monterey Mushrooms, Inc.*, Case No. 2017-CE-074-SAL (also held on 1/23/19)
- Monday, January 28, 2019 @ 1:30 p.m. – Prehearing Conference in *Andrew Smith Company, LLC*, Case No. 2017-CE-011-SAL

- Monday, January 28, 2019 @ 1:30 p.m. – Prehearing Conference in *United Farm Workers of America (Garcia)* Case No. 2018-CL-003-VIS

SETTLEMENT CONFERENCES

- Friday, September 14, 2018 @ 10:00 a.m. – Settlement Conference in *Golden West Veg. Inc.*, Case No. 2016-CE-028-SAL (Settlement conferences also held on 9/24/18, 9/27/18 & 10/2/2018).
- Thursday, November 29, 2018 @ 1:30 p.m. – Settlement Conference in *Andrew Smith Company, LLC*, Case No. 2017-CE-011-SAL (Settlement conferences also held on 12/14/2018, 12/28/2018, 1/11/19, 1/16/19, 1/23/19 & 1/25/19.)

HEARINGS HELD

- Tuesday, September 18, 2018 Hearing in *David Abreu Vineyards Management, Inc.*, Case No. 2017-CE-024-SAL. Hearing was completed in one day.

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

- Fowler Packing Company, Case No. 2016-CE-003-VIS – Case Management Conference held on Monday, February 26, 2018; Prehearing Conference 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. Complaint alleges that Fowler Packing committed an unfair labor practice by unlawfully interrogating workers about their protected concerted activities and through these acts of interrogation, Fowler Packing unlawfully coerced, interfered, and restrained its agricultural employees in the exercise of their concerted activity rights under the Act. Pending ALJ Decision.

ALJ/IHE DECISIONS ISSUED

- *Gerawan Farming Inc.*, Case No. 2015-CE-023-VIS, et al. ALJ Decision issued 10/18/2018. The ALJ found that Respondent violated the Act by promulgating and enforcing a no photography – no video rule and unlawfully discharging an employee pursuant to that rule. The ALJ dismissed an allegation that Respondent failed to provide relevant, necessary information to the UFW because the request post-dated a decertification vote.
- *David Abreu Vineyard Management, Inc.* Case No. 2017-CE-024-SAL ALJ Decision issued 12/19/2018. The ALJ found that David Abreu Vineyard Management, Inc. violated sections 1152 and 1153(a) of the Agricultural Labor

Relations Act (ALRA) by terminating two employees for engaging in protected concerted activities including complaining about working conditions.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW

- *Monterey Mushrooms, Inc.* Case No. 2016-CE-032-SAL; ALJ decision issued 8/28/18; Exceptions received 9/20/18. Replies received 10/3/18. Board Decision issued 1/2/19. Motion for Reconsideration due 1/14/19 and Petition for Review due 2/1/19.
- *GJ Farms, Inc.* Case No. 2017-CE-020-SAL; ALJ decision issued 8/22/18; Exceptions received 9/27/18. Reply received 10/10/2018. Board Decision issued 1/22/19. Motion for Reconsideration due 2/1/19 and Petition for Review due 2/21/19.
- *Gerawan Farming, Inc.* Case No. 2015-CE-023-VIS et al. ALJ decision issued 10/18/2018. Exceptions received 11/13/18. Reply received 12/21/18. Board Decision issued 1/24/19. Motion for Reconsideration due 2/4/19 and Petition for Review due 2/25/19.

CASES PENDING BOARD DECISION OR ACTION

- *Gerawan Farming, Inc.* Case No. 2015-007-VIS, et al. ALJ Decision issued 8/27/2018. Exceptions from both parties received on 10/5/18 and replies received on 11/2/2018.
- *David Abreu Vineyard Management, Inc.* Case No. 2017-CE-024-SAL. ALJ Decision issued 12/19/18. Exceptions filed by Respondent on 1/16/2019 and reply to Exceptions filed by General Counsel on 1/24/19.

BOARD DECISION OR ACTION:

Since the Board's last meeting on September 7, 2018, six Board Decisions have issued.

- ***Gerawan Farming Inc. (2018) 44 ALRB No. 10.***

On September 27, 2018, the Agricultural Labor Relations Board (Board) issued its supplemental decision and order in *Gerawan Farming Inc. (2018) 44 ALRB No. 10.*

Background

On October 25, 2013, Silvia Lopez (Petitioner) filed a petition to decertify the United Farm Workers of America (UFW) as the bargaining representative of the agricultural employees of Gerawan Farming, Inc. (Gerawan). The Agricultural Labor Relations Board (Board) ordered that an election be held and the ballots cast in the election be impounded. The election was held on November 5, 2013.

Following a hearing on election objections and related unfair labor practice (ULP) allegations, an administrative law judge (ALJ) determined that Gerawan committed multiple unfair labor practices and engaged in other objectionable conduct by providing unlawful assistance to the efforts to decertify the UFW. Due to the pervasive nature of the misconduct found, the ALJ recommended dismissing the decertification petition and setting aside the election. On April 15, 2016, the Board issued a decision upholding the ALJ's order dismissing the decertification petition and setting aside the election. (*Gerawan Farming, Inc.* (2016) 42 ALRB No. 1.)

On May 30, 2018, the California Court of Appeal for the Fifth Appellate District issued an opinion reversing certain portions of the Board's unfair labor practice findings in *Gerawan Farming, Inc., supra*, 42 ALRB No. 1, and vacating the Board's order dismissing the decertification petition and setting aside the election. (*Gerawan Farming, Inc. v. ALRB* (2018) 23 Cal.App.5th 1129.) The appellate court remanded the matter to the Board to open and count the ballots cast in the election and to reconsider the Board decision in light of its opinion.

On September 18, the ballots were opened and counted with the following tally: 197 for the Certified Bargaining Representative (UFW); 1,098 for the "No Union" choice, 660 unresolved challenged ballots; and 18 void ballots.

Board Decision and Order

Under the appellate court's findings in this matter, Gerawan committed several unlawful acts prior to the November 5, 2013 election. First, Gerawan engaged in direct dealing with its employees by unilaterally implementing two wage increases in March 2013 and distributing flyers to its employees advising that Gerawan had made the decision to grant the wage increases on its own and that it hoped the union would not delay or obstruct the increases. Next, Gerawan provided unlawful assistance to the circulation of the decertification petition: (1) when a crew boss gathered his crew together on one occasion in October 2013 during worktime and allowed the collection of signatures on the petition, and (2) by disparately enforcing its attendance policy and allowing Petitioner Lopez and her daughter extended absences from work to gather signatures for the showing of interest for almost two-

and-a-half months. Finally, Gerawan unilaterally implemented a temporary wage increase to grape packing employees on October 25, 2013.

The Board evaluated the record on remand, and found that the unlawful and/or objectionable conduct committed by Gerawan did not interfere with the employees' free choice to such an extent that it affected the outcome of the election. Therefore, the Board certified that a majority of the valid ballots were cast for "No Union" in the representation election, and that the UFW lost its prior status as the exclusive representative of the employees for the purpose of collective bargaining..

- ***Gerawan Farming Inc. (2018) 44 ALRB No. 11.***

On October 31, 2018, the Agricultural Labor Relations Board (Board) issued its decision and order in *Gerawan Farming Inc. (2018) 44 ALRB No. 11.*

Background

The United Farm Workers of America (the "UFW") was certified as the representative of the agricultural employees of Gerawan Farming, Inc. ("Gerawan"). An Administrative Law Judge ("ALJ") found that Gerawan unlawfully failed to respond to four separate UFW requests for information and failed to provide notice and an opportunity to bargain over benefit changes in violation of the Agricultural Labor Relations Act ("ALRA" or "Act"). After the ALJ's decision issued, the Agricultural Labor Relations Board ("ALRB" or "Board") certified the results of a decertification election that had occurred in November 2013. As a result, the UFW was decertified.

Board Decision and Order

The Board affirmed the ALJ's conclusion that Gerawan violated the Act by failing to respond to an information request issued by the UFW prior to the November 2013 election. While Gerawan argued that the request at issue was only part of a much broader request, compliance with which would have been very burdensome, the Board agreed with the ALJ that Gerawan had failed to raise the alleged burden at the time of the request and had failed to negotiate with the union over its response. Rather, Gerawan provided no response whatsoever. However, the Board found that dismissal of the remaining unfair labor practice allegations was required because the conduct at issue took place after the November 2013 decertification election. Although the results of the election were not certified until October 2018, under *Nish Noroian Farms (1982) 8 ALRB No. 25*, the certification of results "relates back" to the date of the election and no bargaining violation could be found after that date..

- ***Jacob Diepersloot, et al. (2018) 44 ALRB No. 12***

On November 16, 2018, the Agricultural Labor Relations Board (Board) issued its decision and order in Jacob Diepersloot, et al. (2018) 44 ALRB No. 12.

Background

On June 28, 2018, Administrative Law Judge John J. McCarrick (the “ALJ”) issued a decision granting a Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relation’s Board (the “ALRB” or “Board”) against Respondent Jacob Diepersloot, individually, and dba JD Farms; Jacobo D. Farms; JD Farms Management, Inc. (collectively, “Respondent”). A First Amended Complaint alleged that Respondent violated the Act by threatening, terminating and by refusing to rehire charging party Antonio Renteria (“Renteria”) after he engaged in activity protected by the Agricultural Labor Relations Act (“ALRA” or “Act”). Respondent did not file a timely answer to the First Amended Complaint, contending that it mistakenly believed that its agent, JSV Farm Labor, Inc. (“JSV”) was the employer, and that JSV would be “handling” the matter on Respondent’s behalf. In finding that the Respondent did not demonstrate good cause, the ALJ ordered that Renteria be reinstated and awarded backpay for lost wages, along with a cease and desist order and notice posting, mailing and reading remedies.

Board Decision and Order

The Board found that the Respondent failed to establish good cause to excuse the untimely filed answer. Concluding that the ALJ relied on applicable precedent in making its determination, the Board affirmed the ALJ’s decision to grant the General Counsel’s Motion to Deem Allegations in the First Amended Complaint Admitted and Motion for Default Judgment and affirmed the ALJ’s recommended order.

- ***Monterey Mushrooms Inc., (2019) 45 ALRB No. 1***

On January 2, 2019, the Agricultural Labor Relations Board (Board) issued its decision and order in Monterey Mushrooms Inc. (2019) 45 ALRB No. 1.

Background

Respondent Monterey Mushrooms, Inc. (“Respondent”) planned to implement a new “scaffolding” system for the harvesting of Mushrooms. It scheduled a meeting to introduce the new system to one of its crews. As the crew gathered prior to the meeting, charging party Francisco Lopez discussed the scaffolds with other employees. In the course of the conversation, he stated his opinion that the

scaffolds would be difficult for shorter or smaller employees to use and that they would slow down harvesting, leading to lower wages for piece-rate employees. Supervisor Raul Aguilar approached Mr. Lopez and told him not to “opine on anything” at the meeting due to his “vocabulary” (meaning his use of profanity). An administrative law judge (the “ALJ”) credited Mr. Lopez’ account over Mr. Aguilar’s claim that Mr. Lopez was only instructed not to use profanity and concluded that, by instructing Mr. Lopez not to speak at the meeting, Respondent violated section 1153, subdivision (a)(1) of the Agricultural Labor Relations Act (the “Act”)

Board Decision and Order

The Agricultural Labor Relations Board (the “ALRB” or “Board”) considered exceptions filed by Respondent and the ALRB’s General Counsel. Respondent argued that the time card of one of the witnesses who testified showed that he could not have been present at the relevant time. The Board found it unnecessary to resolve this issue because Mr. Lopez’ account was corroborated by two additional witnesses. The Board agreed with the ALJ that Mr. Lopez was engaged in protected concerted activity when he was approached by Mr. Aguilar and Mr. Aguilar’s instruction would reasonably tend to restrain employees in the exercise of their rights under the Act. The Board rejected Respondent’s argument that the noticing remedy should be limited to directly affected employees and ordered the standard remedy calling for noticing of all Respondent’s agricultural employees. The Board corrected certain errors in the ALJ’s recommended order but otherwise adopted the order.

- **GJ Farms, Inc. (2019) 45 ALRB No. 2**

The Agricultural Labor Relations Board (Board) issued its decision in GJ Farms, Inc., Case No. 2017-CE-020-SAL, on January 22, 2019.

Background

On September 4, 2018, administrative law judge John J. McCarrick (the “ALJ”) issued a decision granting a Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment filed by the General Counsel of the Agricultural Labor Relations Board (the “ALRB” or “Board”) against Respondent GJ Farms, Inc. (“Respondent”). The Complaint alleged that Respondent violated the Agricultural Labor Relations Act (“ALRA” or “Act”) by terminating the employment of charging party Damian Fuentes (“Fuentes”) after he engaged in activity protected by the Act. Under the Board’s regulations, Respondent was required to file an answer on or before May 24, 2018. On June 1, 2018, the Executive Secretary of the ALRB received what Respondent styled as an answer to the Complaint. The envelope containing the answer was postmarked May 29,

2018. The ALJ found: Respondent did not file a timely answer to the Complaint; Respondent failed to demonstrate good cause to excuse the untimely filing; and the answer failed to deny the allegations in the Complaint. The ALJ ordered that Fuentes be reinstated and awarded backpay for lost wages, along with a cease and desist order and notice posting, mailing and reading remedies.

Board Decision and Order

The Board affirmed the ALJ's finding that Respondent's answer was untimely filed. The Board found that Respondent's answer was not received by the Board by the filing deadline and Respondent could not rely upon the Board's "postmark rule" because the answer was not mailed using registered or certified mail and was not postmarked by the filing deadline. Additionally, the Board found that Respondent failed to provide reason to excuse its untimely filing and therefore Respondent was not entitled to relief from default judgment. In reaching these conclusions, the Board affirmed the ALJ's decision to grant the General Counsel's Motion to Deem Allegations in the Complaint Admitted and Motion for Default Judgment and affirmed the ALJ's recommended order. Because the Board found that the answer was untimely filed, it did not reach the issue of whether the answer failed to deny the allegations in the Complaint.

- ***Gerawan Farming, Inc. (2019) 45 ALRB No. 3***

The Agricultural Labor Relations Board (Board) issued its decision in *Gerawan Farming, Inc.*, Case Nos. 2015-CE-023-VIS, et al., on January 24, 2019.

Background

Respondent Gerawan Farming, Inc. (Gerawan) maintains a workplace rule that prohibits employees from taking photographs or recordings on Gerawan's property. On July 24, 2014, Gerawan crew boss Martin Elizondo Cruz saw farmworker Pablo Gutierrez holding a cell phone like he was taking pictures or video-recording during his lunch break. Elizondo reported this violation of Gerawan's no-camera rule, and Gutierrez's employment with Gerawan was terminated following this incident. The administrative law judge (ALJ) found Gerawan unlawfully promulgated its no-camera rule in response to the United Farm Workers of America's (UFW) renewed bargaining demand and increased activity in the late 2012 to 2013 timeframe. The ALJ further found Gerawan's termination of Gutierrez's employment for violating this unlawfully promulgated rule also was unlawful.

Board Decision and Order

The Board considered Gerawan's exceptions, and reversed the ALJ's unfair labor practice findings. The Board determined that the General Counsel did not plead or litigate a claim that Gerawan unlawfully promulgated its no-camera rule, but rather

adopted a narrow theory of violation based solely on Gerawan's ongoing maintenance of the rule. The Board thus reversed the ALJ's finding Gerawan unlawfully promulgated the rule because that claim was neither alleged nor fully litigated. The Board then upheld Gerawan's maintenance of its no-camera rule under the National Labor Relations Board's decision in *The Boeing Co.* (2017) 365 NLRB No. 154. With respect to Gerawan's termination of Gutierrez's employment, the Board concluded the General Counsel failed to establish a prima facie case that Gerawan terminated him in retaliation for his alleged support for the UFW. Accordingly, the Board dismissed the unfair labor practice complaint in its entirety.

ADMINISTRATIVE ORDERS

Board issued 5 administrative orders and released 5 cases for compliance.

- Admin Order No. 2018-12: *Gerawan Farming, Inc.*, 2013-RD-003-VIS. On September 14, 2018, Order Directing the Opening and Counting of Ballots
- Admin Order No. 2018-13: *Gerawan Farming, Inc.*, 2013-RD-003-VIS. On October 11, 2018, Order Denying United Farm Workers of America's Motion for Reopening of the Record or Reconsideration
- Admin Order No. 2018-14: *Gerawan Farming, Inc.*, 2015-CE-007-VIS. On October 16, 2018, Order Denying General Counsel's Motion to Consolidate Liability and Compliance Proceedings Prior to Issuance of Final Order
- Admin Order No. 2018-15: *Gerawan Farming, Inc.*, 2013-RD-003-VIS. On November 19, 2018, Order Denying *Gerawan Farming, Inc.*'s Motion for Costs and Attorney's Fees
- Admin Order No. 2018-16: *Four Seasons Vineyard Management*, 2018-CE-040-SAL. On November 30, 2018, Order Denying General Counsel's Request for Board Action to Enforce Subpoena Duces Tecum

CASES READY OR RELEASED FOR COMPLIANCE

- *United Farm Workers of America (Lopez)* Case No. 2015-CL-006-VIS Board decision issued July 24, 2018. Motion for Reconsideration due date was August 7, 2018 and Petition for Writ of Review was due August 23, 2018. Neither were filed, therefore the matter was released to the Regional Office for compliance on October 9, 2018.

- *Arnaudo Brothers, LP, and Arnaudo Brothers, Inc.*, Case No. 2015-CE-006-VIS. 2017-CE-003-VIS; Board Decision issued 8/16/18. Motion for Reconsideration due date was 8/30/2018 and appeal date was 9/17/18. Neither were filed, therefore the matter was released to the Regional Office for compliance on October 9, 2018.
- *Gerawan Farming, Inc.*, Case No. 2012-CE-041-VIS et al.; Board Decision issued 9/27/2018. Motion for Reconsideration was due on 10/12/2018, and Petition for Writ of Review was due on 10/29/2018. Neither were filed, therefore the matter was released to the Regional Office for compliance on December 3, 2018.
- *Gerawan Farming, Inc.* Case No. 2013-CE-011-VIS et al. Board Decision issued 10/31/2018. Motion for Reconsideration was due on 11/15/2018 and Petition for Writ of Review was due on 12/3/2018. Neither were filed, therefore the matter was released for compliance on December 18, 2018.
- *Jacob Diepersloot, individually, and dba JD Farms; Jacobo D. Farms; JD Farms Management, Inc.* Case No. 2015-CE-027-VIS; Board Decision issued on 11/16/2018. Motion for Reconsideration was due on 12/3/2018 and Petition for Writ of Review was due on 12/17/2018. Neither were filed, therefore the matter was released for compliance on January 10, 2019.

MANDATORY MEDIATION AND CONCILIATION (MMC)

No new requests for referral to MMC.

CASE CALENDARED FOR FUTURE DATES

1. *Andrew Smith Company, LLC*, Case No. 2017-CE-011-SAL Prehearing Conference scheduled for 1/28/2019 and hearing scheduled for 2/26/2019.
2. *Monterey Mushrooms*, Case No. 2017-CE-074-SAL Prehearing Conference scheduled for 1/18/2019 and hearing scheduled for 2/5/2019.
3. *Saticoy Berry Farms, Inc.* Case No. 2017-CE-071-SAL et al. Case Management Conference scheduled for 1/7/2019, Prehearing Conference scheduled for 2/4/2019 and hearing scheduled for 3/5/2019.

4. *United Farm Workers of America (Garcia)* Case No. 2018-CL-003-VIS Case Management Conference scheduled for 1/22/2019. Prehearing conference scheduled for 1/28/2019 and hearing scheduled for 2/12/2019.
5. *Scarborough Farms, Inc.* Case No. 2017-CE-007-SAL. Case Management Conference scheduled for 2/25/2019, Prehearing Conference scheduled for 4/2/2019 and hearing scheduled for 4/30/2019.
6. *Planasa, LLC* Case No. 2018-CE-038-SAL. Case Management Conference scheduled for 2/19/2019, Prehearing Conference scheduled for 3/18/2019 and hearing scheduled for 4/9/2019.
7. *Wonderful Orchards, LLC* Case No. 2016-CE-023-VIS. Case Management Conference scheduled for 2/28/2019, Prehearing Conference scheduled for 4/22/2019 and hearing scheduled for 6/4/2019.
8. *Coast King Packing, LLC* Case No. 2018-CE-028-SAL et al. Case Management Conference scheduled for 3/4/2019, Prehearing Conference scheduled for 5/20/2019 and hearing scheduled for 6/25/2019.
9. *Reiter Brothers, Inc.* Case No. 2017-CE-073-SAL. Case Management Conference scheduled for 2/11/2019, Prehearing Conference scheduled for 5/6/2019 and hearing scheduled for 6/4/2019.

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: On September 12, 2018, the Court issued an order denying the Board's and UFW's petitions for review. The appellate court issued its remittitur on September 13 formally returning the case to the Board. This litigation now is complete.

► ***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 reply on September 19, 2018. Briefing now is complete, and the parties are awaiting issuance of an order denying the petition or issuing a writ of review.

► ***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 a reply brief on September 10, 2018. On November 30, the court issued a writ of review, and the matter now is pending scheduling of oral argument.

► ***Premiere Raspberries, LLC v. ALRB, Sixth District Court of Appeal, Case No. H0456223***

Summary: Petition for writ of review of the Board's decision in 44 ALRB No. 9, in which the Board found Premiere unlawfully refused to bargain with the United Farm Workers of America and ordered bargaining makewhole as a remedy.

Status: Premiere filed this petition for writ of review on September 24, 2018. The Board filed the certified record on October 5. Premiere filed its opening brief on November 8, and the Board filed its respondent's brief on December 13. The UFW also filed an opposition brief on December 13. On December 26, Premiere filed an application for an extension of time to file its reply brief, which the court granted on December 27. Premiere filed separate replies to the Board's and UFW's briefs on January 14, 2019. Briefing now is complete, and the matter is pending issuance of an order dismissing the petition or issuing a writ of review.

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: On October 1, 2018, the Court issued an order denying Gerawan's petition. This litigation now is concluded.

► ***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 October 22, 2018, the Board filed a motion to dismiss the litigation as moot based on the union's decertification. On October 23, the court issued an order requesting responses from Gerawan and the UFW due no later than October 30. Gerawan filed its response on October 25, and the UFW filed its response on October 29. On November 2, Gerawan filed a supplemental letter brief alerting the court to a new Board decision (44 ALRB No. 11) concerning the UFW's decertification. On November 6, 2018, the court issued an order dismissing the case as moot. No party filed any petition for review of the court's order.

► ***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 October 24, 2018, Premiere filed a notice of abandonment of its appeal in the superior court. The reporter's transcript on appeal was filed in the appellate court on October 31, and Premiere then filed a request for dismissal in the appellate court on November 1. The court issued an order dismissing the appeal and its remittitur that same day. This litigation now is complete.

► ***Premiere Raspberries, LLC v. ALRB, Sixth District Court of Appeal, Case No. H0456221***

Summary: Petition for writ of review of the Board's decision in 44 ALRB No. 8, in which the Board ordered a mandatory mediation and conciliation contract into effect between the United Farm Workers of America and Premiere Raspberries.

Status: Premiere filed its petition for writ of review on September 24, 2018. The Board filed the certified record on October 4. Premiere filed its opening brief on October 30. The Board filed its respondent's brief on December 4, and the UFW also filed a brief in opposition to the petition on December 4. Premiere filed separate replies to the UFW's and ALRB's briefs on January 7, 2019. Briefing now is complete, and the

matter is pending issuance of an order dismissing the petition or issuing a writ of review.

► ***Garcia v. ALRB, et al., Fresno County Superior Court, Case No. 13-CECG-01557***

Summary: Petition for writ of mandate seeking review of the Board’s decision in 39 ALRB No. 5 ordering Gerawan and the UFW to MMC and challenging constitutionality of the mandatory medication and conciliation process.

Status: This case had been stayed by the court since September 24, 2014, pending resolution of related issues in case no. F068526 in the Fifth Appellate District. On October 23, 2018, the superior court issued an order to show cause why the case should not be dismissed for failure to prosecute and set a hearing for November 27. Garcia filed a request for dismissal on November 16, and it was entered by the clerk the same day. This litigation now is concluded.

5. General Counsel’s Report

General Counsel Montgomery congratulated Chairwoman Shiroma on her appointment to the Public Utilities Commission.

The General Counsel’s Office has achieved nine settlements since the last Board meeting.

Settlement Highlights and Facts:

1. C & E Farms—Workers complained it was too hot to work. They were reprimanded for talking to other works and trying to organize. Settlement included reading and noticing.
2. WMJ Farms—Workers complained about heat stress and left early. Workers received backpay as well as the usual remedies. Workers who were laid off were offered reinstatement.
3. Channel Islands Berry Farms—Charging Party was laid off 6 days after complaining about working conditions and pay. Worker was awarded backpay.
4. Shalini’s Ag LLC: Achieved a pre-complaint settlement. Two workers terminated after complaining that a supervisor threatened and pushed a worker. Backpay was awarded.

5. Pacific Reserve Nursery and Fuji Fire Flowers: (Salinas) United Food and Commercial Workers union was improperly denied access to a nursery. Settled pre-complaint for access, posting, reading/noticing.
6. West Coast Berry Farms – Employee alleged he was blacklisted after complaining that wife was sexually harassed at work. Case settled for \$3,491.
7. Dutton Ranches Corporation – An H-2A worker complained about restrooms and lack of water. Worker alleged retaliation. Case settled for reading, posting and noticing. This was unusual because H2A workers do not usually come to the ALRB.
8. Golden West Veg – Worker complained about carrying heavy boxes. Case was settled for \$18,000.
9. Apio, Inc. – Worker complained about mistreatment to farm labor contractor. Owner said worker was free to leave and this was taken as an unlawful threat. Case settled for reading, noticing and training.

Outreach: Regional staff have been busy making presentations in Indio, Oxnard and El Centro on Radio Bilingüe, at cannabis allegiance meetings and at Employment Development Department meetings. Our Statewide Outreach Coordinator gave a presentation to Mixteco workers. He is reviewing our outreach materials, and participated in a radio presentation call-in show. We will be hosting a training on February 14 in our ALRB office in Salinas with Dr. Rivera-Salgado of the UCLA labor center.

Staffing: We are filling our attorney position in Oxnard. Our attorney in Salinas will be leaving in February. We will be filing behind her. Our candidate for Senior Legal Typist accepted the position yesterday. We are looking for an Attorney and Field Examiner in Visalia, and a Staff Services Analyst in Salinas.

6. Chief of Division of Administrative Services

Chief Rodrigues submitted her report prior to the meeting. Ms. Rodrigues congratulated Chairwoman Shiroma on her new appointment.

7. Regulations

In light of the new “supplemental” mandatory mediation and conciliation procedures adopted by Assembly Bill No. 2751, it may be necessary for the Board to examine its current regulations governing mandatory mediation and conciliation and adopt new regulations governing this process.

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: Governor Brown signed this bill on September 23, 2018, the provisions of which took effect January 1, 2019. This includes new sections 1149.3 and 1164.10, and amendments to section 1164.3.

9. Personnel

See above reports.

10. Announcements

None.

The public meeting adjourned at 10:53 a.m.