

AGRICULTURAL LABOR RELATIONS BOARD
OFFICE OF THE EXECUTIVE SECRETARY
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STATE OF CALIFORNIA AGRICULTURAL LABOR RELATIONS BOARD
PUBLIC MEETING MINUTES
WEDNESDAY, MARCH 22, 2023
10:00 A.M.

1500 Capitol Avenue
Sacramento, CA 95814

Board: Chair Victoria Hassid
Members Ralph Lightstone, Barry Broad, Isadore Hall, and
Cinthia Flores
Executive Secretary Santiago Avila-Gomez

General Counsel: Julia Montgomery

Administrative
Services Division: Brian Dougherty

Interpreter: Silvana Garrett

These meeting minutes include Appendices, which provide additional information about topics that were addressed during this ALRB Public Board Meeting. Each Appendix is referenced at the appropriate place within these Minutes.

Open Session

1. Call to Order
 - Board Chair Victoria Hassid called the meeting to order at 10:12 a.m.
 - Board Members Broad, Flores, Hall, and Lightstone present.
2. Approval of Minutes from Public Board Meeting, February 8, 2023
 - Board Member Hall moved to approve the minutes from the Public Board Meeting, February 8, 2023.
 - Board Member Flores seconded the motion.

- Motion approved by 5 to 0.
3. Board Chair's Report – presented by Victoria Hassid
 - Acknowledged impact of recent storms on farmworker community, including Planada and Pajaro. Reported on collaboration with Labor and Workforce Development Agency to address these issues.
 - Reported on ALRB co-sponsorship of UC Davis Farm Labor Conference, along with presentations by ALRB staff.
 - Thanked Judge John McCarrick for service upon his retirement.
 4. Executive Officer's Report on Elections, Unfair Labor Practice Complaints, and Hearings
 - See Appendix A.
 5. Litigation Report
 - None.
 6. General Counsel's Report
 - Reported on two cases in Ventura and Santa Barbara Counties.
 - Reported on outreach and participation with Community-Based Organizations and state agencies in Sonoma, Fresno, and Tulare Counties, training and outreach with workers in Santa Barbara, Monterey, Tulare, and Ventura Counties, community events in Santa Cruz, Imperial, Tulare, San Diego, Ventura, Sonoma, Monterey, Napa, and Merced Counties, in addition to participation on radio programs.
 - Board Chair mentioned social media accounts that are now live. Executive Secretary shared handles:
 - Instagram (@alrb.ca)
 - Twitter (@alrb_ca)
 - Facebook (California Agricultural Labor Relations Board)
 7. Division of Administrative Services Report
 - None.
 8. Legislative Report
 - None.
 9. Regulations

- For Regulatory Subcommittee Report, see Appendix B.
 - General Counsel reported on improved workflow procedures.
 - For General Counsel's Memorandum, see Appendix C.
 - Board Member Broad extended gratitude to General Counsel and her staff. Summarized changing variables affecting interpretation of the charge timeline statistics. Recommended continuing monitoring.
 - Board Chair Hassid echoed Board Member Broad's gratitude to General Counsel and staff for their work. Board Chair reported on her interpretation of the statistics.
10. Public Comment (The Board additionally solicits public comment after discussion of each agenda item of the open meeting.)
- None.

Closed Session

11. Announcements
- The next Public Board Meeting will be held on March 28th in Sacramento.
12. Adjourn Meeting
- Meeting adjourned at 11:38 am.

**APPENDIX A:
EXECUTIVE SECRETARY'S REPORT**

STATE OF CALIFORNIA

GAVIN NEWSOM, Governor

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**ALRB PUBLIC MEETING
EXECUTIVE OFFICER'S REPORT
ELECTIONS, UNFAIR LABOR PRACTICE COMPLAINTS, AND HEARINGS**

DATE: March 22, 2023
TO: Agricultural Labor Relations Board
FROM: Santiago Avila-Gomez, Executive Secretary

Complaints and Specifications

----- **Withdrawn** -----

1. *B & H Flowers, Inc.*, Case Nos. 2022-CE-052 et al. (March 17, 2023; Settlement, October 13, 2022; parties entered into informal bilateral settlement agreement)

Board Decisions, Administrative Orders, and Pending Matters

----- **Decision Issued** -----

1. *Zabala Farms of Salinas, LLC*, Case No. 2021-CE-018-SAL (February 21, 2023; Cannabis, Monterey County, California; Petition for Writ of Review due March 23, 2023)

----- **Pending Matters** -----

1. *Gerawan Farms, Inc.*, 2012-CE-041-VIS (44 ALRB No. 1; ALJ Decision, January 20, 2023; Exceptions filed March 3, 2023; Replies due March 24, 2023)
2. *Tri-Fanucchi Farms*, 2013-CE-008-VIS & 2013-CE-014-VIS (40 ALRB No. 4; Requests for Special Permission to Appeal filed March 8 and March 14, 2023)

**APPENDIX B:
REGULATIONS SUBCOMMITTEE REPORT**

STATE OF CALIFORNIA

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DATE: February 13, 2023

TO: Agricultural Labor Relations Board

CC: Santiago Avila-Gomez, Executive Secretary

FROM: Ralph Lightstone, Board Member
Barry Broad, Board Member

RE: Report of the Regulations Subcommittee Re: Proposed Amendments to Reg. 20220
(Unfair Labor Practice Complaint Deadlines)

INTRODUCTION

Last year, the Regulations Subcommittee considered a proposal to adopt a regulation establishing a time limit for the General Counsel to issue a complaint after an unfair labor practice charge has been filed. The last proposal considered by the Board regarding this proposal would have required the General Counsel to issue a complaint within 12 months after a charge was filed, subject to certain grounds allowing for extensions of time. Under these proposals, an unfair labor practice charge would be deemed dismissed if no complaint were issued within the time allowed.¹

After due consideration of comments received from various stakeholders and interested parties, the Board voted at its February 11, 2022 public meeting to defer action on this proposal for one year while the Regulations Subcommittee monitored the status of the General Counsel's disposition of unfair labor practice charges for improvement in the timeframes under which such actions occur. Having done so, the Regulations Subcommittee now provides this report.

REPORT AND RECOMMENDATION

After one year of reviewing the General Counsel's disposition of unfair labor practice charges, the Regulations Subcommittee believes additional time is necessary and warranted to monitor these issues concerning the timeframes in which unfair labor practice charges are disposed.² This recommendation is made for several reasons.

¹ The last proposed regulatory language on this issue is included as an addendum to this report.

² Attached to this report are a series of tables showing unfair labor practice charge disposition statistics on a yearly basis dating back to 2016.

First, because calendar year 2022 only just ended, it is too early to draw any firm conclusions regarding any progress made in the timeframes under which charges filed during this year have been disposed.

Second, although the statistics to date for calendar year 2021 appear at first glance to show a marked improvement in the percentage of charges disposed of under 1 year from the date of filing (74%), only 46 charges were filed that year. That is just over half of the total number of charges filed in each of the previous two calendar years (2019, 2020). A closer look at the data reveals the actual number of charges disposed of under 1 year in 2021 (34) was slightly less than in 2020 (35), and also less than the number of charges filed in 2019 that were disposed of in under 1 year (49).

Finally, while the subcommittee finds the situation has not worsened in the past year, the subcommittee also does not believe the data generated to date supports a finding of significant improvement.

Accordingly, the Regulations Subcommittee recommends the Board continue to monitor these issues concerning charge disposition timeframes for another year in order to assess whether further progress can be made in addressing these issues or whether the Board should consider further rulemaking activity on this subject.

ADDENDUM

Proposed Regulation 20220—Time Limit for the Issuance of a Complaint by the General Counsel

To require the general counsel to issue a complaint within a specified period of time:

To amend regulation 20220 to state:

§ 20220. Complaint.

(a) If, after investigation, the general counsel has reason to believe that an unfair labor practice has been committed, ~~he or she~~ the general counsel shall issue a formal complaint in the name of the Board. The complaint shall contain a statement of the specific facts upon which jurisdiction of the Board is based, including the identity of the respondent, and shall state with particularity the conduct which is alleged to constitute an unfair labor practice. The statement must include, where known, the dates and places of the conduct and the names of the persons who allegedly committed the acts being charged. The Board may disregard any error or defect in the complaint which does not substantially affect the rights of the parties.

(b) The complaint shall be accompanied by a statement explaining: (1) the requirements for an answer, (2) the right of respondent to a hearing, and (3) the manner in which hearings are scheduled; and it shall also include a copy of sections 20190 and 20192 dealing with continuances and extensions of time and a copy of sections 20235 through 20238 concerning discovery.

(c) If the general counsel has not issued a complaint pursuant to subdivision (a) of this section within 12 months of the date an unfair labor practice charge was filed, the charge shall be deemed dismissed. Where an amended charge has been filed, the 12-month time period in which to issue a complaint shall run from the date the original charge was filed. The general counsel may apply to the Board for an extension of time to conduct further investigation of a charge for good cause shown based upon a claim that a charged party's conduct impeded the general counsel's timely investigation of the charge or other extraordinary circumstances. The length of an extension based on a charged party's dilatory conduct may be commensurate with any delays reasonably incurred as a result of such conduct. The length of an extension based on other extraordinary circumstances shall be limited to a single extension of no more than 60 days.

(d) A dismissal pursuant to subdivision (c) of this section shall not be subject to review under section 20219.

Note: Authority cited: Section 1144, Labor Code. Reference: Sections 1151(a), 1160.2, 1160.5 and 1160.6, Labor Code.

Agricultural Labor Relations Board

Unfair Labor Practice Charge Disposition Timelines

2022

<u>Total Charges</u>	<u>Complaints Issued</u>		<u>Withdrawals</u>		<u>Dismissals</u>		<u>Settlements</u>	
70	Total	3	Total	1	Total	3	Total	10
	< 1 Year	3	< 1 Year	1	< 1 Year	3	< 1 Year	9
	> 1 Year		> 1 Year		> 1 Year		> 1 Year	1
	> 18 Months		> 18 Months		> 18 Months		> 18 Months	
	> 2 Years		> 2 Years		> 2 Years		> 2 Years	
	> 3 Years		> 3 Years		> 3 Years		> 3 Years	

Disposition Event Totals:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year	16	23%
> 1 Year	1	1%
> 18 Months		
> 2 Years		
> 3 Years		

Charges Pending:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 6 Months	27	39%
> 6 Months	26	37%
> 1 Year		
> 18 Months		
> 2 Years		

**based on information available as of 2/1/2023*

Agricultural Labor Relations Board

Unfair Labor Practice Charge Disposition Timelines

2021

Total Charges	Complaints Issued		Withdrawals		Dismissals		Settlements	
46	Total	8	Total	7	Total	7	Total	18
	< 1 Year	5	< 1 Year	7	< 1 Year	5	< 1 Year	17
	> 1 Year	2	> 1 Year		> 1 Year	1	> 1 Year	1
	> 18 Months	1	> 18 Months		> 18 Months	1	> 18 Months	
	> 2 Years		> 2 Years		> 2 Years		> 2 Years	
	> 3 Years		> 3 Years		> 3 Years		> 3 Years	

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	34	74%
> 1 Year	4	9%
> 18 Months	2	4%
> 2 Years		
> 3 Years		

Charges Pending:

	Total	% of Total Number of Charges Filed
< 1 Year		
> 1 Year	2	4%
> 18 Months	4	9%
> 2 Years		
> 3 Years		

Agricultural Labor Relations Board

Unfair Labor Practice Charge Disposition Timelines

2020

<u>Total Charges</u>	<u>Complaints Issued</u>		<u>Withdrawals</u>		<u>Dismissals</u>		<u>Settlements</u>	
85	Total	16	Total	9	Total	23	Total	31
	< 1 Year	2	< 1 Year	6	< 1 Year	9	< 1 Year	18
	> 1 Year	5	> 1 Year	1	> 1 Year	6	> 1 Year	6
	> 18 Months	8	> 18 Months	2	> 18 Months	5	> 18 Months	5
	> 2 Years	1	> 2 Years		> 2 Years	3	> 2 Years	2
	> 3 Years		> 3 Years		> 3 Years		> 3 Years	

Disposition Event Totals:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year	35	41%
> 1 Year	18	21%
> 18 Months	20	24%
> 2 Years	6	7%
> 3 Years		

Charges Pending:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year		
> 1 Year		
> 18 Months		
> 2 Years	4	5%
> 3 Years	2	2%

Agricultural Labor Relations Board

Unfair Labor Practice Charge Disposition Timelines

2019

<u>Total Charges</u>	<u>Complaints Issued</u>		<u>Withdrawals</u>		<u>Dismissals</u>		<u>Settlements</u>	
83	Total	14	Total	8	Total	33	Total	18
	< 1 Year	8	< 1 Year	8	< 1 Year	18	< 1 Year	15
	> 1 Year	3	> 1 Year		> 1 Year	6	> 1 Year	
	> 18 Months	2	> 18 Months		> 18 Months	3	> 18 Months	
	> 2 Years	1	> 2 Years		> 2 Years	6	> 2 Years	3
	> 3 Years		> 3 Years		> 3 Years		> 3 Years	

Disposition Event Totals:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year	49	59%
> 1 Year	9	11%
> 18 Months	5	6%
> 2 Years	10	12%
> 3 Years		

Charges Pending:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year		
> 1 Year		
> 18 Months		
> 2 Years		
> 3 Years	10	12%

Agricultural Labor Relations Board
Unfair Labor Practice Charge Disposition Timelines

2018

<u>Total Charges</u>	<u>Complaints Issued</u>		<u>Withdrawals</u>		<u>Dismissals</u>		<u>Settlements</u>	
103	Total	29	Total	13	Total	36	Total	25
	< 1 Year	18	< 1 Year	10	< 1 Year	15	< 1 Year	13
	> 1 Year	3	> 1 Year	1	> 1 Year	13	> 1 Year	7
	> 18 Months	2	> 18 Months		> 18 Months	2	> 18 Months	2
	> 2 Years	4	> 2 Years	1	> 2 Years	3	> 2 Years	2
	> 3 Years	2	> 3 Years	1	> 3 Years	3	> 3 Years	1

Disposition Event Totals:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year	56	54%
> 1 Year	24	23%
> 18 Months	6	6%
> 2 Years	10	10%
> 3 Years	7	7%

Agricultural Labor Relations Board

Unfair Labor Practice Charge Disposition Timelines

2017

<u>Total Charges</u>	<u>Complaints Issued</u>		<u>Withdrawals</u>		<u>Dismissals</u>		<u>Settlements</u>	
133	Total	29	Total	28	Total	44	Total	32
	< 1 Year	14	< 1 Year	25	< 1 Year	26	< 1 Year	26
	> 1 Year	6	> 1 Year	1	> 1 Year	6	> 1 Year	3
	> 18 Months	5	> 18 Months	1	> 18 Months	8	> 18 Months	1
	> 2 Years	2	> 2 Years		> 2 Years	3	> 2 Years	2
	> 3 Years	2	> 3 Years	1	> 3 Years	1	> 3 Years	

Disposition Event Totals:

	<u>Total</u>	<u>% of Total Number of Charges Filed</u>
< 1 Year	91	68%
> 1 Year	16	12%
> 18 Months	15	11%
> 2 Years	7	5%
> 3 Years	4	3%

Agricultural Labor Relations Board

Unfair Labor Practice Charge Disposition Timelines

2016

Total Charges	Complaints Issued		Withdrawals		Dismissals		Settlements	
80	Total	22	Total	13	Total	35	Total	10
	< 1 Year	10	< 1 Year	11	< 1 Year	16	< 1 Year	2
	> 1 Year	5	> 1 Year	1	> 1 Year	9	> 1 Year	4
	> 18 Months	5	> 18 Months	1	> 18 Months	2	> 18 Months	2
	> 2 Years	1	> 2 Years		> 2 Years	6	> 2 Years	1
	> 3 Years	1	> 3 Years		> 3 Years	2	> 3 Years	1

Disposition Event Totals:

	Total	% of Total Number of Charges Filed
< 1 Year	39	49%
> 1 Year	19	24%
> 18 Months	10	13%
> 2 Years	8	10%
> 3 Years	4	5%

APPENDIX C:
GENERAL COUNSEL MEMORANDUM

STATE OF CALIFORNIA

GAVIN NEWSOM, *Governor*

General Counsel
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GENERAL COUNSEL MEMORANDUM

TO: Board Members

FROM: Julia Montgomery, General Counsel

CC: Santiago Avila-Gomez, Executive Secretary
Todd M. Ratshin, Chief Board Counsel

RE: Resolved Investigations Data

DATE: March 14, 2023

This memorandum shows data relating to the General Counsel program's progress in resolving investigations during the past two calendar years and the past three fiscal years. For purposes of this memorandum, a case has a "resolved investigation" after it moves out of the investigative phase into one of the following phases: issuance of a complaint, dismissal of a charge, acceptance of a request for withdrawal of a charge or a pre-complaint settlement. A case with a "resolved investigation" may either be completely resolved and moving towards closure, or it may still be pending because a complaint was filed, compliance with informal settlement terms is still occurring, it is in compliance proceedings or an appeal is pending. This data does not include resolutions that occurred post-complaint such as Board decisions and post-complaint settlements.¹

Table 1 compares the percentage of investigations resolved in the years 2021 and 2022, categorized by length of time. We demarcated four categories:

1. six months or less (" ≤ 6 months")
2. more than six months to one year (" > 6 mo – 1 yr")
3. more than one year to two years (" > 1 yr – 2 yrs")
4. more than two years (" > 2 years")

As seen in **Table 1**, 13% of the investigations resolved in 2021 were more than 2 years old at the age of resolution. Put another way, 87% of the investigations resolved in 2021 were less than two years old. In

¹ This avoids double counting as such matters would already be counted as "resolved investigations" at the time the complaint was filed.

2022, this percentage increased to 24% for resolved investigations over 2 years old. This data reflects the General Counsel program's prioritization of resolving investigations for older cases.

Table 1: Investigations Resolved in Calendar Years 2021 and 2022 by Age				
	# of Investigations		% of Investigations	
Length of Investigation	2021	2022	2021	2022
Resolved ≤6months	8	15	14%	18%
Resolved >6months – 1 year	14	22	25%	27%
Resolved >1year – 2 years	27	26	48%	31%
Resolved >2years	7	20	13%	24%
Total Resolved	56	83	39%	52%

Furthermore, the General Counsel program saw an increase in the percentage of total resolved investigations between 2021 and 2022 from 39% to 52% [56 resolved investigations out of 145 total pending investigations in the year 2021 (39%), and 83 resolved investigations out of 159 total pending investigations in the year 2022 (52%)].

Table 2 compares the number and percentage of resolved investigations to the total number of pending investigations by fiscal year, which is how case data is usually tracked.

Table 2: Investigations Resolved by Fiscal Year			
Fiscal Year	# of Investigations	# of Resolved Investigations	% of Investigations
FY 19-20	181	87	48
FY 20-21	162	54	33
FY 21-22	158	90	56

In sum, this data shows that the General Counsel program has improved over time by resolving more investigations overall, as well as a larger number and percentage of older investigations. These improvements are the likely result of procedural changes the General Counsel began implementing in the fall of 2021, including centralizing the tracking of case data, more streamlined processes for review of work product and clarified expectations for regional office staff. It is also worth noting that these improvements occurred despite significant staffing and leadership changes in the Visalia region resulting from the retirement of former Visalia Regional Director Chris Schneider in November 2021, the hiring and training/onboarding of Blaz Gutierrez beginning in May 2022, and his departure from the ALRB in February 2023. The General Counsel program also hired and onboarded 11 new staff in 2022 alone (over 25% of the total number of GC program staff). Once we hire a new Visalia Regional Director and finish the initial training and onboarding of our new staff, we anticipate an even greater improvement in these outcomes going forward.