

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

**Board Conference Room
915 Capitol Mall, 3rd Floor
Sacramento, CA 95814**

May 9, 2012

Time: 10:06 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck, Robinson and
Wender, Administrative Law Judge Soble
Members of the
Public: Bryan Little, Director of Labor Affairs, Governmental Affairs
Division, California Farm Bureau Federation

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for April 18, 2012, were approved 3-0 with minor edits.
2. **Public Comments:** None.
3. **Chair's Report:** The American Heart Association (AHA) is holding the 12th Annual State Employee Heart Walk and Wellness Fair on Thursday, September 20, from 11:30 am to 1:30 PM, on the West Steps of the State Capitol. Budget change proposal (BCP) concepts are due this summer. That said, the May Revise is coming up and there's an additional \$ 2 billion dollar state deficit predicted for the current year. The ALRB is receiving administrative assistance from EDD with the retirement of Senior Accountant Nancy Davis and the departure of Lyta Winston, retired annuitant. EDD will help in the interim with accounting and contracting and we will revise our interagency agreement with them.

Job announcements out for our Senior Accountant and Business Services Officer positions and applications are coming in.

- 4. General Counsel's Report:** General Counsel Torres-Guillén reported that Regional Staff will be filing for a temporary restraining order (TRO) against Montalvo Farms in Oxnard today for hearing tomorrow. She will be in court on Monday in Santa Cruz for a contempt hearing against Dutra Farms, as they have violated the court's order twice. Dutra Farms has violated the court's order by not allowing access and not reinstating the employee who was fired. At the same time, the General Counsel's office is working on appellate proceedings in the Sixth District Court of Appeals in this same matter.

The General Counsel reports that there are twelve 2010-11 ULPs, eleven 2012 ULPs, and several complaints that are scheduled for hearing. She further reports that the compliance cases are almost concluded, with the matter of finalizing closing memos remaining. The General Counsel reports that all of the NOs have satisfied the showing of interest except for Santa Rosa Berry Farms.

Attorney, Silas Shawver, started last Monday in Visalia. Irma Luna, a new field examiner who speaks Mixteco Alto and Mixteco Bajo in addition to Spanish, started in Salinas.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA):

None

NOTICE OF INTENT TO ORGANIZE (NO):

None

PENDING ELECTION MATTERS:

D'Arrigo Bros. of California, 2010-RD-004-SAL

On November 2, 2010, agricultural employee Alvaro Santos filed a decertification petition with the Salinas Regional Office seeking the ouster of the incumbent representative UFW at D'Arrigo Bros. of California. The employer is located in Monterey and Imperial Counties and has 1,665 employees. An election was held on November 17, 2010, in Spreckles, Gonzalez and Calipatria, CA. The regional director impounded the ballots pending investigation of an unfair labor practice charge filed by the incumbent union UFW. The UFW filed objections to the election on November 24, 2010. On February 24, 2011, the Salinas Regional Director issued a complaint against D'Arrigo Bros. alleging that, since October 27, 2010 and continuing, the employer initiated, participated in, aided, and/or gave support to the decertification campaign against the certified union UFW. On March 11, 2011, the Executive Secretary issued his order on the UFW's election objections. Any request

for review was due March 21, 2011. Neither party filed a request for review. On March 15, 2011, the Executive Secretary consolidated the election objections and unfair labor practice complaint as each had the same or some of the same basis for the petition and complaint. A prehearing conference was held on May 27-28, 2011, and a prehearing conference order issued on May 31, 2011. A hearing on the consolidated complaint and election objections commenced on June 13, 2011. The hearing resumed on July 11, 2011 and closed on September 7, 2011. The post-hearing briefs were filed January 23, 2011, and the matter is pending the Investigative Hearing Examiner's decision.

Sun World, 2010-UC-1-VIS

The UFW filed a unit clarification petition involving Sun World and a number of other entities on September 14, 2010. The employer requested and was granted an extension of time to file its response to the petition by November 12, 2010. The UFW was granted an extension through December 15, 2010 to respond to the region's request for information. The union's response was received on December 15, 2010. The Regional Director granted the Employer an extension February 1, 2011, to file a further response. The region received the additional information and the UFW requested the opportunity to respond to the information received. Their response is due May 16, 2011. On October 12, 2011 the Regional Director requested that the union's unit clarification petition or amendment of certification be set for hearing. On October 13, 2011 the Executive Secretary granted that request and set the matter for hearing for October 26, 2011. The hearing opened and closed on October 26, 2011. The post-hearing briefs were due January 20, 2012. On December 19, 2011, the UFW requested a three-week extension of time to file its post-hearings brief. The Executive Secretary granted the union's request. Both the UFW and Employer filed their post-hearing briefs. On February 28, 2012, the IHE issued his decision on the UFW's unit clarification petition. The UFW filed its exceptions to the IHE's decision on March 12, 2012. Reply briefs were due March 22, 2012. On March 21, 2012, the Executive Secretary granted the Employer request for a four-day extension of time to file reply to exceptions. The reply brief was filed March 26, 2012. On April 18, 2012 the Board issued its decision and order affirming the IHE's decision dismissing the UFW's petition for unit clarification. On April 24, 2012 the UFW filed a request for reconsideration. On May 4, 2012 the Board denied that request (Admin. Order No. 2012-06).

COMPLAINT REPORT

COMPLAINTS ISSUED:

Montalvo Farms, LLC, 20112-CE-004-SAL

On May 8, 2012, the Acting Salinas Regional Director issued a complaint against Montalvo Farms, LLC, alleging that the employer refused to rehire a worker due to his protected, concerted activity and for using coercive tactics to intimidate workers.

**PREHEARING, HEARING OR SETTLEMENT CONFERENCES
SCHEDULED:**

None.

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

South Lakes Dairy Farms, 2009-CE-028-VIS

Pre-hearing conference held April 24, 2012

First Amended Consolidated Complaint issued May 3, 2012

Hearing June 5-14, 2012

Bayou Vista Dairy, 06-CE-9-VI

Pre-hearing conference June 1, 2012

Hearing July 9-20, 2012

H&R Gunland Ranches, Inc., 2009-CE-063-VIS et al.

Pre-hearing conference held March 26, 2012

Hearing August 27, 2012

Premiere Raspberries, LLC, 2012-CE-003-SAL

Pre-hearing conference August 28, 2012

Hearing September 11-24, 2012

CASES PENDING ALJ/IHE DECISION

D'Arrigo, 2010-RD-004-SAL

The matter is pending the IHE's decision

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

None.

CASES PENDING BOARD DECISION OR ACTION:

San Joaquin Tomato Growers, 93-CE-38-VI

Exceptions received March 5, 2012

Reply briefs filed April 20, 2012

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Sun World, 2010-UC-1-VIS, 38 ALRB No. 3

Board decision and order issued April 18, 2012 (38 ALRB No. 3)

Order denying UFW request for reconsideration issued May 4, 2012

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

San Joaquin Tomato Growers, Inc., 2011-MMC-001

On November 17, 2011 the UFW filed a declaration requesting mandatory mediation and conciliation. On November 22, 2011 the employer filed its answer and opposition to the motion. On December 2, 2011, the Board issued an order to show cause why it should not dismiss the union's request for failure to show that the parties have not previously had a binding contract between them. The union's response was filed December 13, 2011. The employer's reply was filed December 21, 2011. On December 23, 2011 the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011 the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012 in Modesto CA. On January 18, 2012 the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. On January 25, 2012 the UFW filed a request for ruling on the pleadings. On January 26, 2012 the employer filed its opposition to that request. On January 27, 2012 the Board denied the UFW's request. The hearing on the MMC matter was held on February 8, 2012. Post-hearing briefs were received February 23, 2012. On March 19, 2012, the employer filed exceptions to the ALJ decision. Reply briefs are not provided for in the Board's regulations. On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (See 38 ALRB No. 2.) On April 3, 2012, the California State Mediation and Conciliation Service issued its list of nine mediators in accordance with Labor Code section 1164, subdivision (b). On April 10, 2012, the parties selected Matthew Goldberg as the mediator/arbitrator in this case. The matter is pending the selection of the mediation dates.

Ace Tomato Company, Inc., 2012-MMC-001

On March 14, 2012, the UFW filed a declaration requesting mandatory mediation and conciliation. The employer's response was received March 23, 2012. On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (See Admin. Order No. 2012-5.) On April 3, 2012, the California State Mediation and Conciliation Service issued its list of nine mediators in accordance with Labor Code section 1164, subdivision (b). On April 5, 2012, the parties selected Matthew Goldberg as the mediator/arbitrator in this case. The matter is pending the selection of the mediation dates.

COURT LITIGATION:

Premiere Raspberries LLC dba Dutra Farms, CV 173564

On March 1, 2012, the UFW filed unfair labor practice charge no. 2012-CE-003-SAL in the Salinas Regional Office. Because the charge alleged a discriminatory termination of a worker-organizer during an organizing campaign, the General Counsel expedited the investigation and, based upon a proper showing of reasonable cause, filed an application for a Temporary Restraining Order and Order to Show Cause on Preliminary Injunction in Santa Cruz Superior Court against Premiere Raspberries, LLC dba Dutra Farms. Premiere Raspberries is located in the Watsonville area and employs approximately 800 workers at peak.

On April 11, 2012, the court granted the General Counsel's request for an injunction. The court ordered the reinstatement of agricultural employee Dalia Santiago and ordered the company to allow ALRB access to Respondent's employees. On April 17, 2012, the court denied Respondent's request for a stay of its order, finding that its order of April 13, 2012 remained in effect, notwithstanding the provisions of California Code of Civil Procedure section 916 and Respondent's notice of appeal filed April 13, 2012. Dutra Farms has also filed a Request for Stay in the 6th DCA, claiming that section 1160.4(c) removing application of CCP 916's automatic stay provisions applies only to TROs and not to preliminary injunctions. A contempt hearing in Superior Court is scheduled for May 16, 2012.

San Joaquin Tomato Growers, Inc., 2011-MMC-001

The Board issued its decision on March 29, 2012. Though this was not a final decision of the Board and therefore not appealable, any attempt to nonetheless appeal this decision was due within 30 days, i.e., April 29, 2012. No such writ was filed by any party.

MISCELLANEOUS:

None.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System— Intern Nickolas Saldivar is providing the data input for the system and keeping it up to date. Analyst Sharon Massie is at a meeting on the email migration. Education/Outreach— The U.C. Berkeley Labor Occupational Health Program staff will be coming in at noon to discuss the education and outreach contract. Today's Board meeting will be extended to include a presentation by the U.C. Berkeley staff as a continuing agenda item.
- b. Election Manual—Board Counsel Wender will continue to review the manual for any necessary legal updates, then meet with the remainder of the committee to review current practices.
- c. Master Calendar

The Executive Secretary reported on the progress on reports due.

7. Regulations

- (a) Update on Regulations to Implement Senate Bill No. 126 –On May 2, 2012, the Office of Administrative Law (OAL) approved the regulations adopted by the ALRB on April 18, 2012 implementing Senate Bill 126 and filed the approved regulations with the Secretary of State. OAL also granted the ALRB's request that the regulations go into effect immediately upon filing, therefore the regulations are now in effect.
- (b) Discussion of Potential Subjects for Rulemaking In 2012: Items listed in the Rulemaking Calendar (Unit Clarification Procedure, Voter Eligibility Exclusions (Family Members), Exculpatory Evidence, Electronic Filing). At its next meeting on May 22, 2012, the Board will review and approve questions concerning electronic filing to be presented to the Ad Hoc Committee for response.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB*

AB 2676, as introduced, Committee on Labor and Employment. Unemployment insurance: use of information.

Under existing law, the information obtained in the administration of the Unemployment Insurance Law is for the exclusive use and information of the Director of Employment Development in the discharge of his or her duties and is not open to the public. However, existing law requires the director to permit the use of the specified information for specified purposes, and allows the director to require reimbursement for direct costs incurred. Existing law provides that a person who knowingly accesses, uses, or discloses this confidential information without authorization is guilty of a misdemeanor.

This bill would require the director to provide the Agricultural Labor Relations Board with information for use in the investigation or enforcement of the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act. By providing this information to the Agricultural Labor Relations Board, this bill would expand the crime related to the unauthorized disclosure of this information, and impose a state-mandated local program.

This bill was introduced on March 5, 2012. The bill was referred to the Committees on Labor and Employment and Insurance on March 22, 2012. On April 19, the bill was passed from committee and re-referred to the Committee on Appropriations.

9. Personnel – The ALRB staff took Lyta Winston to lunch yesterday on the occasion of her departure. We thank her for her diligent and relentless dedication to the mission of the ALRB.

10. Roundtable –

Member Mason and General Counsel Torres-Guillen will be speaking at an AgSafe meeting in Coalinga to discuss the changes to the ALRA resulting from the enactment of SB 126.

The Daily Journal named General Counsel Sylvia Torres-Guillen as one of the Top Women Lawyers of 2012 and is holding a reception in her honor today at the Four Seasons hotel in Beverly Hills.

The Board is meeting today at 12 PM with the UC Berkeley Labor Occupational Health Program (LOHP) to discuss the outreach contract which was recently finalized.

On Friday, May 11, 2012 between 10:30 AM-12:00 PM Antonio Barbosa will be meeting with DIR & Salesforce in Oakland Re Case Tracking Management System.

Chairwoman Shiroma and Member Rivera-Hernandez attended the Women in Agriculture Reception yesterday at Spataro's. Member Rivera-Hernandez also attended the Women's Foundation Reception.

The next Board meeting will be on May 22.

The public meeting recessed at 11:20 a.m. and reconvened at 12:00 p.m. for a meeting with the U.C. Berkeley Labor Occupational Health Program staff. The public meeting adjourned at 1:15 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.