

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 22, 2012

Time: 10:10 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; and Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for May 9, 2012, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** Chairwoman Shiroma reported on the Labor and Workforce Development Agency (LWDA) meeting. Governor Brown issued his May revise to his proposed budget. LWDA Secretary Morgenstern anticipates employees will begin working a 4 day/38 hour workweek on July 1, 2012, for one year contingent upon bargaining. State offices will be closed on Fridays. All departments will be reviewing contracts to determine if the work covered by those contracts can be done using State employees. All non-essential retired annuitants will be eliminated. This afternoon ALRB management will meet with EDD staff to review the current-year ALRB budget. Chairwoman Shiroma, General Counsel Torres-Guillén, Member Rivera-Hernandez, Executive Secretary Barbosa, Supervising Staff Counsel Alegría De La Cruz, Attorney Jessica Arciniega, Attorney Cristina Pena, and Field Examiner Irma Luna attended the United Farm Worker (UFW) Convention in Bakersfield.
- 4. General Counsel's Report:** The General Counsel reported on the status of cases in the regions. On May 11, 2012, a Ventura County Superior Court Judge ruled in favor of a Montalvo Farms employee and ordered the employee be rehired. The employee returned to work on May 12th. ALRB staff provided Montalvo Farms workers and supervisors with information regarding rights afforded workers under the Agricultural Labor Relations Act. On May 11, 2012, the 6th District Court of Appeals ruled in our favor in Premiere Raspberries/Dutra Farms by denying the Petition for Writ of

Supersedeas and Request for Stay. The affected employee returned to work on May 12th. On May 16, 2012, the Santa Cruz Superior Court held Premier Raspberries/Dutra Farms in contempt and fined the company \$1,500. Miyasaka Farms agreed to reinstate two workers on May 18, 2012. There are no longer any retired annuitants on the General Counsel's staff. Member Mason and General Counsel Torres-Guillén spoke at the annual AgSafe Conference attended by safety, health and human resource people in the agricultural industry in California.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

There are no active NA's as of this date.

NOTICE OF INTENT TO ORGANIZE (NO)

Eight (8) NO's have been filed in the current fiscal year. All met the 10% showing of interest except one, Santa Rosa Berry Farms, LLC.

| Filing Date | Filing Party | Employer | 10% Met |
|--------------------|---------------------|---|----------------|
| 9/26/2011 | Teamster Local 890 | Eckhart Seed Company | Yes |
| 3/13/2012 | UFW | Montalvo Farms, LLC | Yes |
| 3/21/2012 | UFW | Catalinos Berry Farms, LLC | Yes |
| 3/27/2012 | UFW | Nakamura Sales Corporation aka J. Nakamura Berry Farms | Yes |
| 4/3/2012 | UFW | D.W. Berry Farms, LLC | Yes |
| 4/4/2012 | UFW | Premiere Raspberries, LLC dba Dutra Farms | Yes |
| 4/10/2012 | UFW | Rio Mesa Farms, LLC | Yes |
| 4/12/2012 | UFW | Santa Rosa Berry Farms, LLC | No |

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.

COMPLAINT REPORT

COMPLAINTS ISSUED:

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

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

Pre-hearing conference held April 24, 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

Montalvo Farms, 2012-CE-004-SAL

Pre-hearing conference September 6, 2012 (tentative)

Hearing October 8-12, 2012 (tentative)

CASES PENDING ALJ/IHE DECISION

D'Arrigo Bros. of California, 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:

None.

**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 parties have met for approximately 31 sessions and are discussing potential dates for the submission of final proposals, responses to final proposals and mediator's decision.

COURT LITIGATION:

Premiere Raspberries LLC dba Dutra Farms, CV 173564

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 Cal. 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. On May 16, 2012, the

Superior Court held Premier Raspberries in contempt for failing to comply with its earlier order requiring worker reinstatement and ALRB noticing of employees and supervisors while the company pursued its ultimately unsuccessful appeal. The Court imposed a fifteen hundred dollars fine on Premier Raspberries.

MISCELLANEOUS:

None.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System— Chairwoman Shiroma and Analyst Massie reported on several meetings they attended regarding the status of email migration and moving circuits to the California Government Enterprise Network (CGEN).
- b. Education/Outreach— UC Berkeley: The Board and General Counsel met with the UC Berkeley consultants. The consultants have generated a series of questions for stakeholders in the farmworker community and are developing questions for the employer community. They will also develop a method of contacting the indigenous farmworker community.
- c. Election Manual—Review of the Election Manual is ongoing as time permits.
- d. Master Calendar

The Executive Secretary reported on the progress on reports due.

- 7. Regulations --** The Board considered and adopted 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. The bill is set for hearing on May 25, 2012.

9. **Personnel** – Araceli Centeno has been hired as a Field Examiner I in the Visalia Regional Office.

10. **Roundtable**

Sylvia Torres-Guillén will be a panelist at an event entitled *The Future of Foreign-Born Labor in US Agriculture* cosponsored by AGree and the Farm Foundation at the Oak Brook Hills Marriott Resort in Chicago, IL on July 10, 2012.

The Board plans to meet once in July on Wednesday, July 18th.

The public meeting adjourned at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.