

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 1, 2012

Time: 10:00 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; ALJ Soble and Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for July 18, 2012, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** The Chair and General Counsel have been working with the Employment Development Department (EDD) and Labor and Workforce Development Agency (LWDA or Agency) on year-end financials. Current figures indicate the Agricultural Labor Relations Board underspent last year.
4. **General Counsel's Report:** The General Counsel updated the Board on the status of cases in the regions. Progress is being made on pending unfair labor practice cases. The General Counsel anticipates approximately a half-dozen new complaints will issue within the next month
5. **Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

There are no active NAs at this time.

NOTICE OF INTENT TO ORGANIZE (NO)

Ten (10) NOs have been filed in the current fiscal year. All but one has met the 10% showing of interest.

Filing Date	Filing Party	Employer	10% Met
09/26/2011	Tmster Local 890	Eckhart Seed Co.	Yes
03/13/2012	UFW	Montalvo Farms, LLC	Yes
3/21/2012	UFW	Catalinos Berry Farms, LLC	Yes
03/27/2012	UFW	Nakamura Sales Corporation aka J. Nakamura Berry Farms	Yes
04/3/2012	UFW	D.W. Berry Farms, LLC	Yes
04/4/2012	UFW	Premiere Raspberries, LLC dba Dutra Farms	Yes
04/10/2012	UFW	Rio Mesa Farms, LLC	Yes
04/12/2012	UFW	Santa Rosa Berry Farms, LLC	No
05/23/2012	UFW	Nakamura Sales Corporation	Yes
6/18/2012	UFW	George Amaral Ranches, Inc.	Yes

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. On June 15, 2012 the ALJ issued his decision in this matter. Exceptions to that decision are currently due July 9, 2012. Reply briefs, if any, are due July 23, 2012. On June 15, 2012 the Respondent/Employer requested an extension of time to file the exceptions to the ALJ decision and also requested leave to file an exceptions brief not to exceed 120 pages. On June 20, 2012, the Executive Secretary granted both requests. The exceptions to the IHE's decision are due August 14, 2012. Reply briefs are due August 27, 2012.

George Amaral Ranches, Inc., 2112-RC-001-SAL

On June 18, 2012 the UFW filed a representation petition with the Salinas ALRB Regional Office seeking to represent the agricultural employees of George Amaral Ranches, Inc. The company grows mix leaf lettuce, red and green cabbage, celery, romaine, iceberg lettuce, broccoli, cauliflower, lollo bionda and red batavia, sweet corn, cantaloupe & watermelon. It has operations in Monterey, Santa Cruz and Santa Benito Counties and employs approximately 300 workers.

The Salinas Acting Regional Director has determined that a majority of the employees at George Amaral Ranches, Inc were on strike at the time of the filing of the election petition and, accordingly, called for a 48 hour expedited election. The election was held on June 19 and 20, 2012. The final tally of ballots yielded the following election results:

UFW	265
No Union	65
Unresolved Challenged Ballots	<u>14</u>
Total	344

The number of unresolved challenged ballots is insufficient to affect the outcome of the election and a majority of the valid ballots counted has been cast for the UFW. On June 27, 2012 the Employer filed objections to the election. On July 9, the UFW filed a motion to dismiss the Employer's election objections. On July 13, 2012 the Board issued its decision on the Employer' election objections and issued a notice of investigative hearing to be heard on August 7, 2012. On July 24, 2012, the Employer filed a motion requesting withdrawal of its election objection and cancellation of the pending investigative hearing. On July 24, 2012, the Board granted both requests. Also on July 24, 2012, the Executive Secretary issued a certification of representative as the UFW had received a majority of the valid ballots and cast and the Employer had withdrawn its objections to the election.

Gargiulo, Inc., 2012-RC-001-VIS

On July 9, 2012, the United Farm Workers filed a Petition for Certification with respect to Gargiulo, Inc., a tomato grower which has approximately two hundred and sixty agricultural employees located in Merced, Madera and Fresno Counties. ALRB regional staff determined that there was a strike requiring a 48-hours strike election.

The Visalia ALRB Regional Office conducted the election on July 11, 2012 at the Mendota Community Center in Mendota, CA from 3:00 a.m. to 6:00 a.m. The final tally showed the following results:

UFW	186
No Union	40
Unresolved CBs	<u>2</u>
Total	228

(Four void ballots)

The number of unresolved challenged ballots is insufficient to affect the outcome of the election and a majority of the valid ballots counted has been cast for the UFW. Election objections, if any, were by July 18, 2012. As neither party filed objections to the election, a certification of representative issued July 19, 2012. July 30, 2012, the Executive Secretary issued a corrected order issuing Certification of Representative. The original order contained an incorrect case number. On July 31, 2012, the employer filed a request to amend the Certification of Representative to reflect the correct designation of the bargaining unit. The matter has been referred to the Board for response.

COMPLAINT REPORT

COMPLAINTS ISSUED

Premiere Raspberries LLC dba Dutra Farms, 2012-CE-029-SAL

On July 30, 2012, the Salinas Acting Regional Director issued a complaint alleging that a forewoman interfered with the union's access rights by refusing to leave the area where organizational access was being taken, surveilling employees during the taking of access and engaging in coercive speech.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

FOUR HEARINGS ARE SCHEDULED

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

Pre-hearing conference held March 26, 2012

Telephone Conference Call held July 10, 2012

Telephone Conference Call scheduled August 1, 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

Hearing October 8-12, 2012

Perez Packing, Inc., 2012-CE-003-VIS

Pre-hearing conference October 18, 2012

Hearing November 5, 2012

CASES PENDING ALJ/IHE DECISION

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

The post-hearing briefs are due August 13, 2012.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

Exceptions due August 14, 2012

Reply due August 27, 2012

CASES PENDING BOARD DECISION OR ACTION:

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

Request for review of mediator's report.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Ace Tomato Company, Inc., 2012-MMC-001 (July 25, 2012) 38 ALRB No. 6

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 mediator has issued his report to the Board and the official record in the case, which were received by the Board on July 17, 2012. According to the Board's regulations, the parties may file a petition for review of the mediator's report within seven (7) days. The petition for review was received July 26, 2012. The Board's decision is due August 6, 2012.

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. On June 27, 2012 the mediator issued his report to the Board. On July 5, 2012 the employer filed a petition for review of that report. On July 16, 2012, the Board received the official record of the proceedings, thus triggering the 10-day period for a preliminary decision by the Board as to whether a prima facie case has been established warranting review. Ace Tomato Company, Inc. (Ace) timely filed a petition for review of the mediator's report, urging that the Board reject the wage rates set by the mediator. On July 25, 2012, in accordance with the statutory standard of review, the Board issued its decision

rejecting Ace's contentions, finding that nothing in the record indicated that the mediator's findings were clearly erroneous, or arbitrary or capricious. The Board thus affirmed the mediator's report in full. The parties have 30 days to seek court review of the Board's decision (i.e., August 24, 2012).

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. On August 31, 2012, Premiere Raspberries, LLC needs to file its appendix and opening brief.

Montalvo Farms, Case No. 56-2012-00416985-CU-PT-VTA

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. A notice of settlement was filed by the ALRB on June 13, 2012. The matter is fully resolved pending compliance with the settlement.

San Joaquin Tomato Growers, Inc. Case No. 93-CE-38-VI (38 ALRB No 4) Court Case No. C071434

On June 28, 2012, the UFW filed a Petition for Writ of Review of the Board's Decision and Order. On July 5, 2012, the Board filed a request for an extension of time to file the certified record. The Court granted the request for an extension of time on July 6, 2012 and the certified record was to be due on August 8, 2012. Also on July 6, 2012, the Board filed a Motion to Dismiss the UFW's Petition for Writ of Review. On July 20, 2012, the UFW filed an Opposition to the Board's Motion to Dismiss. On July 25, 2012, Board Counsel attempted to file a Response to the UFW's opposition, but was told that an Application for Permission to File a Response needed to accompany the Response. On July 26, 2012, before Board Counsel could file the Application for Permission to file a Response, the Court granted the Board's Motion to Dismiss the UFW's Petition for Writ of Review.

MISCELLANEOUS:

Mario Martinez of the United Farm Workers of America inquired about the amount of money in the Agricultural Employees Relief Fund (AERF).

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—A meeting was held with the ALRB's Office of Technology Services (OTech) account representatives, ALRB management and staff, and a representative of Native American Heritage Commission (NAHC) regarding the sharing a CGEN connection at 915 Capitol Mall. It was determined that a meeting with all agencies involved in the CGEN project is necessary. Labor and Workforce Development Agency (LWDA) AIO Carlos Quant is looking into efficiencies to assist the ALRB.
- b. Education/Outreach—UC Berkeley is nearing the end of interviews with stakeholders as part of developing an outreach approach.
- c. Election Manual—The third chapter of the Election Manual is near completion and will be circulated when finished.
- d. Master Calendar—The Executive Secretary reported on the progress on reports due.

7. Regulations

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). The Board considered and adopted questions concerning electronic filing to be presented to the Ad Hoc Committee for response. A summary of responses the ALRB received in response to the proposal to allow electronic filing was distributed. The general consensus is that electronic filing is a good idea. The next step will be to decide what form it should take. The Board will seek additional input from the regional staff.

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

Nothing to report.

9. Personnel – A Senior Legal Typist announcement to assist the Board and Board Counsel has been drafted. The ALRB submitted a justification for retaining its retired annuitant administrative law judge.

10. Roundtable – The Board and General Counsel have been invited to Agricultural Presidents' Counsel Luncheon to be held at The Sutter Club, on September 11, 2012.

The Kickoff Breakfast for Making Strides against Breast Cancer is scheduled for Thursday, August 23, 2012 at 7:00 a.m. To RSVP email makingstridessacramento@cancer.org or call 1.916.446.7933, Option 3.

The California State Employees Charitable Campaign (CSECC) Statewide Kickoff will be held on the West Steps of the State Capitol on August 22, 2012, from 11:00 a.m. to 1:00 p.m.

The United Way's Annual Campaign Kick-Off: Night with the River Cats will be held at Raley Field on Thursday, August 23, 2012.

The public meeting adjourned at 11:05 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.