

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 15, 2012

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Acting Executive Secretary Soble, Board Counsel Heyck, Robinson and Wender

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for August 1, 2012, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** Chairwoman Shiroma congratulated General Counsel Torres-Guillén on her confirmation by the Senate. She also reported that the Administrative staff including Accounting Officer Cam and Business Service Office Saldivar are working on tracking templates for accounting and business services procedures and reports.
4. **General Counsel's Report:** General Counsel Torres-Guillén reported that the Regional Offices were busily working on cases. She also reported that she is seeking to fill two attorney positions in Salinas.
5. **Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
08/04/12	UFW	Corralitos Farms LLC

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
08/04/2012	UFW	Corralitos Farms LLC	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. On August 2, 2012 the Employer/Respondent requested a two-week extension of time to file its exceptions brief and General Counsel requested an extension of time to file its reply brief. Both requests were granted by the Executive Secretary. Exceptions are now due on August 28, 2012 and reply briefs are due on October 26, 2012.

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	2
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 request was denied by the Board on August 3, 2012. On August 7, 2012 the employer filed a request seeking clarification of the geographical scope of the unit. The matter is pending before the Board for decision.

Corralitos Farms, LLC, 2012-RC-002-SAL

On August 4, 2012, the United Farm Workers filed a Petition for Certification with respect to Corralitos Farms, LLC, a strawberry grower in Monterey county. The employer has approximately 340 employees. The petition was withdrawn by the UFW.

Corralitos Farms, LLC, 2012-RC-003-SAL

On August 4, 2012, the United Farm Workers filed a Petition for Certification with respect to Corralitos Farms, LLC, a strawberry grower in Monterey county. The employer has approximately 265 employees. On Friday, August 3, 2012, regional staff was informed of a possible strike election the following morning at Corralitos Farms in Monterey County, a strawberry grower with approximately three hundred employees. The United Farm Workers (UFW) filed a Notice of Intent to Take Access ("NA"), a Notice of Intent to Organize ("NO"), and a Petition for Certification on Saturday, August 4, 2012. However, the strike election did not go forward as the UFW failed to make the showing for a strike election. Regional staff conducted a showing of interest this morning after receiving the employer's eligibility list, and found that the UFW had not met a majority showing. The UFW did make a sufficient showing of interest to receive the NO list. The UFW then withdrew its petitions for certification. The UFW may resubmit the petition at a later date.

COMPLAINT REPORT

COMPLAINTS ISSUED

On August 14, 2012, the General Counsel issued an order consolidating cases and a consolidated complaint in Premiere Raspberries. Case nos. 2012-CE-003-SAL; 2012-CE-029-SAL; 2012-CE-030-SAL; 2012-CE-038-SAL; 2012-CE-046-SAL; 2012-CE-047-SAL.

COMPLAINTS WITHDRAWN

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 Calls held July 10 and August 1, 2012

Hearing August 27, 2012

Premiere Raspberries, LLC, 2012-CE-003-SAL, et al.

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:

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

Exceptions due August 28, 2012

Reply due October 26, 2012

CASES PENDING BOARD DECISION OR ACTION:

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Decision issued August 3, 2012.

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

Decision issued August 10, 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 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. On August 3, 2012 the Board issued its decision granting review on two matters. The first matter is a possible math error as to the amount of picking rate increases and the second matter is the inclusion of tractor drivers in the bonus program. As to the other matters to which San Joaquin Tomato Growers, Inc. objected, the Board found that the mediator's conclusions were neither clearly erroneous, nor arbitrary or capricious, and went into effect as of the decision issuance date and are not in abeyance. The matter is pending the Mediator's revised report following the Board's decision.

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). On August 1, 2012 the UFW filed a request for agency action to enforce the anti-stay provision in the MMC law. On August 7, 2012 the employer filed its response to the motion. On August 8, 2012 Board ordered the company to provide further response by August 9, 2012 as it found the company's initial response did not provide adequate information for the Board to determine if the company had implemented the terms of the Board's July 25, 2012 decision and order. The employer submitted its response on August 9, 2012. On August 10, 2012, the Board issued a decision finding that enforcement of its orders is legally available only after first obtaining a court judgment, which can be obtained in only two ways: (1) by an appellate court issuing a judgment affirming the Board's decision; or (2) where the time for court review has lapsed. Neither had occurred at the time of the UFW's request for enforcement. The Board also observed that the remedy the UFW seeks is more akin to temporary injunctive relief. The Board noted that temporary relief to assure employees are being paid at the contract rates is warranted here, however, the mandatory mediation provisions of the Agricultural Labor Relations Act (ALRA) do not provide statutory authority for that type of action. The Board outlined another available avenue by taking administrative notice of a pending related unfair labor practice charge filed by the UFW that may provide for temporary relief, subject to the General Counsel's final authority to issue complaints and seek injunctive relief pursuant to ALRA section 1160.4.

COURT LITIGATION:

Premiere Raspberries LLC dba Dutra Farms, CV 173564

On April 13, 2012, the Honorable Paul Marigonda (Superior Court of California, County of Santa Cruz) issued a Preliminary Injunction ordering Premiere Raspberries, LLC dba Dutra Farms ("Dutra Farms") to reinstate agricultural employee, Dalia Santiago, pursuant to Labor Code section 1160.4 (as amended on January 1, 2012). Dutra Farms filed its notice of appeal the same day and stated that section 1160.4(c), which prohibits a stay pending appeal, does not apply to Preliminary Injunctions

because Preliminary Injunctions are not "temporary relief." Dutra Farms' opening brief with the Sixth District Court of Appeal is due August 31, 2012.

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 inquired about the amount of money in the Agricultural Employee Relief Fund (AERF). Mr. Martinez was informed that there is presently \$31,195 in the fund.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—
On August 16, 2012, there will be a meeting with Steve Guida regarding updating the case tracking system.
- b. Education/Outreach—Board Members and the General Counsel received a draft summary of the interviews and data collected by U.C. Berkeley to assist in the development of updated outreach materials. General Counsel Torres-Guillén reported that she spoke to members of the California Strawberry Commission on August 14, 2012.

c. Election Manual—Senior Board Counsel Wender completed revisions of the first three chapters of the Election Manual and forwarded them to the committee for review.

d. Master Calendar

The Executive Secretary reported on the progress on reports due.

LWDA Transition Plan – The plan was submitted on August 15, 2012.

LWDA May and June Expenditures Report was submitted on July 30, 2012.

Small Business/Disabled Veteran Business Enterprise (SB/DVBE) report was submitted to Department of General Services (DGS) on August 1, 2012.

DGS statewide survey regarding the mailing activities of state governments is due by August 24, 2012.

Defensive Driver Training – Certificates for all ALRB employees must be submitted to DGS by September 1, 2012.

Bilingual Language Survey (SPB) is due on October 1, 2012.

Bilingual Implementation Plan - SPB requested additional information concerning our Spanish Bilingual implementation plan by September 28, 2012:

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. Responses were received and Senior Board Counsel Wender forwarded a summary of responses to the committee.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB*
Nothing new to report.

9. Personnel – There are two vacant attorney positions in the Salinas Regional office.

10. Roundtable

The public meeting adjourned at: 10:55 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.