

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 5, 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; and Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for August 15, 2012 were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** The Chair reviewed the items discussed at the Labor and Workforce Development Agency (LWDA or Agency) senior management meeting on August 15, 2012. The Chair and General Counsel will attend today's senior management meeting. Former ALRB employee Bill Camp has been appointed to the Workforce Investment Board.
4. **General Counsel's Report:** The regions have been working on two hearings: (1) Gunland Ranch which is currently being heard in Madera; and (2) Premiere Raspberries which will be heard in Salinas next week. The General Counsel filed an Ex Parte Application for a Temporary Restraining Order (TRO) and Order to Show Cause related to unfair labor practice charge 2012-CE-024-VIS involving Ace Tomato Company. On August 27, 2012, San Joaquin County Superior Court Judge Barbara A. Kronlund denied the General Counsel's request for a TRO. While Judge Kronlund denied the request for a TRO, Judge Kronlund will conduct a hearing on September 20, 2012, on the General Counsel's request that Ace show cause as to why a preliminary injunction should not be granted. The General Counsel is awaiting approval of two contracts related to the Ace and San Joaquin compliance cases from Employment Development Department (EDD). Once these contracts are in place, work will continue on these cases.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

09/05/2012 UFW Coralitos Farms LLC Yes

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
09/05/2012	UFW	Coralitos 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. The employer filed exceptions to the ALJ's decision on August 28, 2012. On August 29, 2012, the UFW filed a motion to accept a late filed exception and brief. On September 4, 2012, the Executive Secretary granted the employer's request to file an opposition to the motion. The opposition is due September 5, 2012. Executive Secretary's ruling to follow. 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	<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 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. On August 30, 2012, the Executive Secretary informed Mr. Saqui that if he believes that there is a unit clarification issue that he may file a unit clarification petition pursuant to Section 20385(a) of the Board's regulations. To this date, no such petition has been filed.

COMPLAINT REPORT

COMPLAINTS ISSUED

Ace Tomato Company, Inc., 2012-CE-024-VIS

On August 17, 2012, the Regional Director issued a complaint against Ace Tomato Company, Inc., alleging that the company refused to implement and abide by its collective bargaining agreement with the UFW.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

THREE HEARINGS ARE SCHEDULED

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

General Counsel issued Amended Consolidated Complaint, August 29, 2012

Pre-hearing conference August 21, 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

HEARINGS IN PROGRESS

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

Hearing commenced August 27, 2012 and is still in progress.

CASES PENDING ALJ/IHE DECISION

None.

ALJ/IHE DECISIONS ISSUED:

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

ALJ decision issued August 30, 2012

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

Exceptions filed August 28 and 29, 2012

Replies due October 26, 2012

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

Exceptions due September 24, 2012

Reply due October 9, 2012

CASES PENDING BOARD DECISION OR ACTION:

None.

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 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 its decision and order denying the UFW's request that the Board seek enforcement of the Board's decision in 38 ALRB No. 6. The Board noted that there was a pending related unfair labor practice charge filed by the UFW that may provide an avenue for temporary relief via the Board's injunctive relief procedures.

D. Papagni Fruit Co., 2012-MMC-002

On August 16, 2012, the United Farm Workers (UFW) filed a request for mandatory mediation and conciliation pursuant to Labor Code section 1164, subdivision (a), as to the D. Papagni Fruit Company, which is located in Madera, California. On August 21, 2012, the employer filed a response. On August 24, 2012, the Board issued its decision sending this matter to mandatory mediation and conciliation. On August 24, 2012, the Executive Secretary requested a list of mediators. On August 30, 2012, the California Mediation and Conciliation State Service produced the list of mediators and the parties have seven days to either select a mediator from the list or mutually designate a mediator from a list of all qualified mediators maintained by CSMCS. The parties need to make their selection by September 10, 2012.

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 previously due August 31, 2012, has now been extended to October 1, 2012.

Ace Tomato Company, Inc., 2012-CE-024-VIS

On August 23, 2012, the General Counsel filed an Ex Parte Application for a Temporary Restraining Order (TRO) and Order to Show Cause related to unfair labor practice charge 2012-CE-024-VIS. This charge was filed by the UFW alleging that Ace Tomato Company had refused to implement the collective bargaining agreement, thus leaving the workers without a grievance process, seniority or wage increases. Ace Tomato Company has announced that it is selling its packinghouse and may shut down by the end of the year. The ALRB sought a TRO that would prevent Ace from refusing to implement the collective bargaining agreement, so that workers would be allowed to exercise their rights under the ALRA before the end of this harvest season, which may be their last. The hearing on the TRO was heard on August 24, 2012 in the Superior Court for the County of San Joaquin at 8:30 a.m. before Judge Kronlund in Department 11. The court addressed the parties in chambers and preferred to hear argument after Ace submitted its papers. The judge ordered the hearing continued to Monday, August 27, 2012, at 9 a.m. On August 27, 2012, the judge denied the General Counsel's request for a TRO. While Judge Kronlund denied the request for a TRO, Judge Kronlund will conduct a hearing on September 20, 2012, on the General Counsel's request that Ace show cause as to why a preliminary injunction should not be granted.

Ace Tomato Company, Inc., ALRB Case No. 2012-MMC-001

On August 23, 2012, Ace Tomato Company, Inc. filed a petition for writ of review with the Fifth Appellate District Court of Appeals seeking review of the Board's decision affirming the mediator's decision following referral to the mandatory mediation and conciliation (MMC) provisions of the Agricultural Labor Relations Act (ALRA). On August 27, 2012, the UFW filed a preliminary opposition to the petition. On August 28, 2012, the ALRB filed its preliminary opposition. On September 4, 2012, the Board filed the certified record with the court. The matter is pending a ruling on the preliminary oppositions and/or briefing by the parties as set forth by the court (opening brief due in 35 days; response brief due 35 days and closing brief due 25 days).

MISCELLANEOUS:

On September 19, 2012, the Department of Fair Employment and Housing is conducting a webinar on Sexual Harassment Prevention Training from 10 a.m. to noon at no cost for all employees. To participate, employees need to register.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—
Effective immediately, the purchase of tablet devices require approval from the California Technology Agency. The California Technology Agency will be issuing policy within the next couple of weeks in response to concerns raised by the Governor's Office. The General Counsel requested a meeting be scheduled

with all parties involved in a shared CGEN connection at 915 Capitol Mall to ascertain the status of the project. Steve Guida has been providing training on case and time tracking system.

- b. Education/Outreach—UC Berkeley project—A draft report will be circulated this week summarizing feedback from interviews of community and employer representatives. . Executive Secretary Barbosa participated in an event at the Mexican Consulate in Sacramento last week.
- c. Election Manual—Board Counsel will meet to divide up the work on updating the election manual. Clarification of instructions on the unit designation description provided by regional staff in the Notice and Direction of Election was discussed.
- 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 is awaiting regional staff input regarding electronic filing.

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

SB 691, as amended, Lieu. Unemployment Insurance: use of information.

As amended on August 24, 2012, this bill would amend Unemployment Insurance Code section 1095 to authorize the Employment Development Department (EDD), to the extent permitted by federal statutes and regulations to provide the Agricultural Labor Relations Board (ALRB) with employee, wage, and employer information for use in the investigation or enforcement of the Agricultural Labor Relations Act (Labor Code section 1140, et seq.). The bill also includes other provisions unrelated to the ALRB and is tied to the concurrent enactment of AB 174 and SB 1258, which relate to information to be provided by EDD to various other state agencies. The bill would add the following language, at new subdivision (ac) of section 1095 of the Unemployment Insurance Code authorizing the Director of EDD:

To provide the Agricultural Labor Relations Board with employee, wage, and employer information, for use in the investigation or enforcement of the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code). The information shall be provided to the extent permitted by federal statutes and regulations.

This language differs slightly, but not substantively, from the language formerly contained in AB 2676. The bill was read a third time and amended on August 24, 2012. On August 28, the bill was passed and ordered to the Senate. On August 30, the Senate concurred with the Assembly amendments and ordered the bill to engrossing and enrolling.

9. **Personnel** – A meeting is scheduled with LWDA today regarding additional personnel needed to meet all information technology and accounting requirements and resolve accounting firewall issues as well as the need for a Board secretary. The General Counsel has hired an administrative assistant who will start on September 18, 2012.

10. Roundtable

The Asia Pacific State Employees will be hosting a symposium entitled *Navigating Leadership Challenges and EEO in a Changed World* on November 8, 2012. This event is being held at California Public Employees' Retirement System (CalPERS), Lincoln Plaza North 400 Q Street, Sacramento, CA 95811 from 8:00 a.m. - 5:00 p.m.

Former ALRB attorney Paul Starkey has been named the recipient of the Seventh Annual St. Thomas More Award bestowed by the Catholic Diocese of Sacramento. The Annual Red Mass for the Diocese of Sacramento for Members of the Bench and Bar will be held at 5:00 p.m. on October 3, 2012, at the Cathedral of the Blessed Sacrament, 1017 11th Street, Sacramento, followed by the St. Thomas More Award Bench and Bar Reception and Banquet at the Sutter Club, 1220 Ninth Street, Sacramento.

The public meeting adjourned at 11:40 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.