

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**September 19, 2012**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason  
General Counsel: Assistant General Counsel Blanco  
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck, Robinson and Wender; ALJ Soble, Administrative Assistant Abaunza and Analyst Massie

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for September 5, 2012 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** The Chair reported that at the last Labor and Workforce Development Agency (LWDA or Agency) senior management meeting all agencies were asked to keep close track that travel is mission critical. There will be an LWDA senior management meeting today.
- 4. General Counsel's Report:** The Assistant General Counsel reported on the status of unfair labor practice charges in the regions. Contracts relating to the San Joaquin and Ace Tomato compliance cases are going through a review process at LWDA. Once the approval process is completed, the General Counsel's office will be able to quickly move forward with the cases. A hearing will be held on September 20, 2012, on General Counsel's request that Ace Tomato Company show cause as to why a preliminary injunction should not be granted in Case No. 2012-CE-024-VIS.
- 5. Executive Officer Report:**

## **ELECTION REPORT**

### **NOTICE OF INTENT TO TAKE ACCESS (NA)**

| <b>Filing Date</b> | <b>Filing Party</b> | <b>Employer</b>       |
|--------------------|---------------------|-----------------------|
| 09/05/12           | UFW                 | Corralitos Farms, LLC |
| 09/10/12           | UFW                 | Miyasaka, Inc.        |

### **NOTICE OF INTENT TO ORGANIZE (NO)**

Eleven (11) NOs have been filed in the current fiscal year. All but one has met the 10% showing of interest.

| <b>Filing Date</b> | <b>Filing Party</b> | <b>Employer</b>                                           | <b>10% Met</b> |
|--------------------|---------------------|-----------------------------------------------------------|----------------|
| 09/26/11           | Tmster Local 890    | Eckhart Seed Co.                                          | Yes            |
| 03/13/12           | UFW                 | Montalvo Farms, LLC                                       | Yes            |
| 03/21/12           | UFW                 | Catalinos Berry Farms, LLC                                | Yes            |
| 03/27/12           | UFW                 | Nakamura Sales Corporation<br>aka J. Nakamura Berry Farms | Yes            |
| 04/3/12            | UFW                 | D.W. Berry Farms, LLC                                     | Yes            |
| 04/4/12            | UFW                 | Premiere Raspberries, LLC<br>dba Dutra Farms              | Yes            |
| 04/10/12           | UFW                 | Rio Mesa Farms, LLC                                       | Yes            |
| 04/12/12           | UFW                 | Santa Rosa Berry Farms, LLC                               | No             |
| 05/23/12           | UFW                 | Nakamura Sales Corporation                                | Yes            |
| 06/18/12           | UFW                 | George Amaral Ranches, Inc.                               | Yes            |
| 08/04/12           | UFW                 | Corralitos Farms, LLC                                     | Yes            |
| 09/05/12           | UFW                 | Corralitos Farms, LLC                                     | Yes            |
| 09/10/12           | UFW                 | Miyasaka, Inc.                                            | Yes            |
| 09/10/12           | UFW                 | Premiere Raspberries, LLC<br>dba Dutra Farms              | 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. 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 5, 2012, the Employer/Respondent filed its opposition to the motion. On September 10, 2012, the Executive Secretary granted the UFW's motion and accepted the late filed exception and brief. The employer has not sought seek review of this ruling. Reply briefs are due on October 26, 2012.

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

On September 14, 2012, the Salinas Acting Regional Director approved the UFW's request to withdraw its representation petition in 2012-RC-002-SAL.

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

On September 14, 2012, the Salinas Acting Regional Director approved the UFW's request to withdraw its representation petition in 2012-RC-003-SAL.

**Corralitos Farms, LLC, 2012-RC-004-SAL**

On September 14, 2012, the UFW filed a representation petition with the ALRB Salinas Regional Office seeking to organize the agricultural employees of Corralitos Farm in Watsonville CA. The employer grows strawberries in Monterey County and

has approximately 360 employees. An election is scheduled this morning, Wednesday, September 19, 2012, to be held in Salinas from 6:00 a.m. to 8:00 a.m. and in Watsonville from 5:30 a.m. to 8:30 a.m. A tally will be available later this afternoon. The Employer indicates that approximately half of the workers speak Mixteco Bajo.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

None.

### **COMPLAINTS WITHDRAWN**

None.

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

### **THREE HEARINGS ARE SCHEDULED**

#### **Montalvo Farms, 2012-CE-004-SAL**

Parties are to advise the Executive Secretary by September 20, 2012 whether the matter has settled; if it has not settled, then parties are to advise Executive Secretary by September 21, 2012 whether the hearing needs to be moved.

Pre-hearing conference September 25, 2012

Hearing October 8-12, 2012

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

Pre-hearing conference October 18, 2012

Hearing November 5, 2012

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

Pre-hearing conference October 10, 2012

Hearing November 7, 2012

## **HEARINGS IN PROGRESS**

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

Hearing September 11-24, 2012

## **CASES PENDING TRANSCRIPTS OR ALJ/IHE DECISION**

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

Hearing ended September 11, 2012. The matter is pending the receipt of hearing transcripts.

### **ALJ/IHE DECISIONS ISSUED:**

None.

## **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 October 15, 2012

Reply due October 29, 2012

## **CASES PENDING BOARD DECISION OR ACTION:**

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

General Counsel's Request for Special Permission to Appeal ALJ Ruling

Employer's opposition is due September 19, 2012. No replies are permitted.

## **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. On September 11, 2012, the parties selected Matthew Goldberg as the mediator in this case. The mediator and parties now need to meet and come to an agreement on a mediation schedule.

#### **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. F065589**

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). On September 7, 2012, the employer filed its reply in further support of motion to strike preliminary oppositions or, alternatively, application for extension of time to reply. On September 16, 2012, the employer filed informal reply on the standards for issuing a stay. On September 18, 2012, the Board filed informal reply on the appropriate venue to hear this action. The matter is pending resolutions on the motions.

**MISCELLANEOUS:**

The Executive Secretary will issue the 2012 AERF allocation memo today.

The Executive Secretary will issue a Memo to Acting Regional Director Blanco on unit determinations today.



## 6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—We are awaiting confirmation that the Treasurer's Office has approved sharing a CGEN connection with other building tenants. Business Services will move forward with installation of new wiring to connect to the CGEN service once Treasurer's participation in the project is verified. Steve Guida has been providing training on the case tracking system to General Counsel and Administration staff. The IT Capital Plan for 2012-13 is due at the California Technology Agency no later than October 15, 2012.
- b. Education/Outreach Project-UC Berkeley—Community and employer representative groups being interviewed by UC Berkeley were discussed. The Chair will request that UC Berkeley follow up with representatives who have not yet responded. Suggestions were made for additional farm worker group contacts.
- c. Election Manual—The Board is awaiting feedback from the regional staff on the latest draft updates.
- d. Annual Report—The Executive Secretary will distribute a memo outlining assignments and setting deadlines for the Fiscal Year 2011/12 Annual Report.
- e. 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). Various methods of electronic filing were discussed.

## 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. The bill was enrolled and presented to the Governor on September 10, 2012.

9. **Personnel** – General Counsel’s Administrative Assistant Vanessa Abaunza started on September 18, 2012. Ms. Abaunza has a law degree from Nicaragua. She is currently awaiting her California Bar exam results.

#### 10. **Roundtable**

Nothing to report.

The public meeting adjourned at 11:15 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**