

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 17, 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
Others Present: Daniel Rounds, California Senate Office of Research; Brenda Coleman, California Association of Winegrape Growers

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for October 3, 2012 were approved 3-0.
- 2. Public Comment:** None.
- 3. Chair's Report:** Accounting Officer Cam is working with the Department of Finance on closing all expenditures through September and will have a progress report of expenditures by the next Board meeting.
- 4. General Counsel's Report:** The General Counsel reported on the status of unfair labor practice charges and compliance activities in the regions.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
09/20/12	Teamsters Local 890	Foothill Packing, Inc.

The Regional Director has completed his investigation on whether the entity Foothill Packing, Inc. is an agricultural employer under the Act. His report to the parties is expected to issue soon.

NOTICE OF INTENT TO ORGANIZE (NO)

Four (4) NOs have been filed in the current fiscal year. All have met the 10% showing of interest.

Filing Date	Filing Party	Employer	10% Met
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 dba Dutra Farms	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 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 did not seek review of this ruling. Reply briefs are due on November 9, 2012.

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 was held on September 19, 2012, with the following results:

UFW	154
No Union	187
Unresolved Challenged Ballots	<u>19</u>
Total	360

The number of unresolved challenged ballots is insufficient to affect the results of the election. The UFW filed objections to the election on September 26, 2012. On October 16, 2012, the Board issued its decision on election objections. The Board set 15 of the UFW's 17 objections for an investigative hearing, and set two objections for hearing conditioned on the outcome of the investigation of two unfair labor practice (ULP) charges currently pending before the General Counsel. An investigative hearing has been scheduled for November 15, 2012.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

THREE HEARINGS ARE SCHEDULED

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

First Pre-hearing conference held October 12, 2012

Second Pre-hearing conference held October 17, 2012

Hearing November 7, 2012

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

Hearing November 15, 2012

HEARINGS IN PROGRESS

None.

CASES PENDING TRANSCRIPTS OR ALJ/IHE DECISION

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

Hearing ended September 11, 2012. Hearing transcripts were received.

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

Hearing September 19, 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 November 9, 2012

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

Exceptions filed October 15, 2012

Replies due October 29, 2012

Note: ALJ granted Respondent's motion to augment the record on appeal.

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 was received September 19, 2012. No replies are permitted.

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

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

UFW filed Statement in Support of Special Appeal to ALJ Ruling.

Employer's opposition was received September 27, 2012. No replies are permitted.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

San Joaquin Tomato Growers, 93-CE-38-VI

On October 16, 2012, the Acting Regional Director filed a Notice of 2012 Revised Makewhole Specification with the Board. An answer to the revised specification is due within fifteen (15) days from the service of the specification, i.e., November 5, 2012.

BOARD DECISIONS:

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

On October 16, 2012 the Board issued its decision on election objections. The Board set 15 of the UFW's 17 objections for an investigative hearing, and set two objections for hearing conditioned on the outcome of the investigation of two unfair labor practice (ULP) charges currently pending before the General Counsel. An investigative hearing has now been scheduled for November 15, 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 Mediator's revised report following the Board's decision was filed September 22, 2012. The parties' petition for review of that report was due October 4, 2012. Neither party filed a petition for review. The Board issued its decision on this matter on October 9, 2012, and any petition for writ of review is due November 8, 2012.

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. On October 17, 2012, the parties will be responding to each other's discovery requests (list of witness/documents). Mediation sessions have been scheduled for October 22 and 23, 2012.

COURT LITIGATION:

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. On September 20, 2012 the court denied the General Counsel's request for preliminary injunction. The Respondent prepared a Proposed Order and the General Counsel filed objections to that order. The judge has not signed a final order yet though the General Counsel has indicated it will be seeking review of this order. A hearing before Judge Kronlund is scheduled on October 24, 2012.

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. On October 10, 2012, the employer filed its opening brief. The Board's reply brief is due on November 14, 2012.

MISCELLANEOUS:

The Executive Secretary will be forming an ad hoc committee to ascertain the legal resources needed by the agency to perform its work. The committee will consist of Board and General Counsel attorneys, administrative law judges, our procurement officer and other interested persons. The committee will review legal materials including texts and online research services.

6. Special Projects

- a. Information Technology Committee: The Treasurer's Office is in the process of routing for signature and legal review the Memorandum of Understanding regarding the shared CGEN connection. Business Services was advised by Office of Technology Services that AT&T will contact us regarding any additional steps we must take before initializing the wiring.
- b. Education/Outreach Project-UC Berkeley—The California Farm Bureau Federation has not yet been interviewed. UC Berkeley will be talking to a social media group regarding our needs. There will be a status meeting today with the Chair and General Counsel.
- c. Revision of the ALRB Election Manual—Regional staff is currently editing the latest draft.
- d. Annual Report—Both the Board and General Counsel staff requested additional time to complete their assignments. The assignments will now be due on November 2, 2012.
- 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).*

Nothing new to report.

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

Nothing new to report.

9. Personnel – Attorney Irma Martinez has started working in the Salinas office.

10. Roundtable

The California State Employees Charitable Campaign forms will be distributed this week and are due on October 31st.

Board meetings in November will be held on the second and fourth Wednesdays, November 14 and 28. November 12, 22 & 23 are State holidays.

The public meeting adjourned at 10:42 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.