

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

April 3, 2013

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Executive Secretary Barbosa, Board Counsel Robinson and Inciardi;
Legal Secretary Soule and Analyst Massie
Others Present: Daniel Rounds, Principal Consultant, Senate Office of Research

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for March 20, 2013, 2013 were approved with minor changes 3-0.
- 2. Public Comment:** Mr. Rounds inquired if there have been any contracts filed with provisions dealing with sexual harassment.
- 3. Chair's Report:** On March 21, 2013 Chairwoman Shiroma, General Counsel Torres-Guillén, Marisa Duek, LWDA Associate Secretary, Board Member Rivera-Hernandez, and Executive Officer Barbosa attended the Senate Budget Subcommittee 2 hearing. . The subcommittee voted 1-1, with Chair Beall approving, and Senator Nielsen dissenting. Senator Jackson was not present at the hearing. The ALRB budget item will be kept open until May 2013. The Department of Industrial Relations is providing assistance with accounting.
- 4. General Counsel's Report:** The General Counsel reported on the status of hearings, unfair labor practice charges, complaints, settlements and compliance activities in the regions.
- 5. Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

None.

NOTICE OF INTENT TO ORGANIZE (NO)

Seven (7) NOs have been filed in the current fiscal year. Six of the seven have met the 10% showing of interest.

Filing Date	Filing Party	Employer	10% Met
07/09/12	UFW	Gargiulo, Inc.	Yes
08/04/12	UFW	Corralitos Farms, LLC	Yes
09/05/12	UFW	Corralitos Farms, LLC	Yes
09/10/12	UFW	T.T. Miyasaka, Inc.	Yes
09/10/12	UFW	Premiere Raspberries, LLC dba Dutra Farms	Yes
02/05/13	UFW	Gila Farm Land LLC	No
02/06/13	UFW	RBI Packing LLC & Gila Farm Land 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 United Farm Workers (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. 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 hearing was held from June 13, 2011 to September 7, 2011. The post-hearing briefs were filed January 23, 2011. On June 15, 2012, the Administrative Law Judge (ALJ) issued his decision in this matter. The employer filed exceptions to the ALJ's decision on August 28, 2012. On November 9, 2012, the Respondent/Employer, UFW and General Counsel filed their answering brief. All

briefing has been completed and the matter is pending before the Board for decision.

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

On September 14, 2012, the United Farm Workers (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. The investigative hearing that began on November 15, 2012 closed on December 11, 2012. On February 1, 2013 the parties submitted a joint stipulation extending the due date for the post-hearing briefs up to and including February 18, 2013 and the issuance of the ALJ's decision on the consolidated ULP and election objection case up to and including March 1, 2013. On February 4, 2013, the Executive Secretary approved the stipulation. The General Counsel, UFW and Respondent filed their post-hearing briefs on February 19, 2013. The ALJ issued his decision on March 1, 2013. On March 19, 2013 the Executive Secretary granted the UFW and General Counsel's joint request for an extension of time to file exceptions to the ALJ's decision. Exceptions are due April 4, 2013. Reply briefs are due April 18, 2013. The Executive Secretary granted the UFW's request to file exceptions brief not to exceed 75 pages.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

COMPLAINTS WITHDRAWN

None.

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

HEARINGS SCHEDULED

Ace Tomato Company, Inc., 93-CE-37-VI (makewhole case)
Hearing May 20, 2013

Ace Tomato Company, Inc., 2012-CE-007-VIS (alleged refusal to provide information)

Hearing: April 9, 2013. General Counsel has filed a motion to continue this hearing to a date to be determined, following the completion of the hearing in 93-CE-37-VI. The parties are in agreement to continue this hearing. The motion is under consideration.

HEARINGS TO BE SCHEDULED

None.

HEARINGS IN PROGRESS

None.

CASES PENDING TRANSCRIPTS, POST-HEARING BRIEFS OR ALJ/IHE DECISION

H&R Gunland Ranches, Inc., 2009-CE-063-VIS, et al.
The matter is pending the ALJ's decision.

Perez Packing, Inc., 2012-CE-003-VIS
The matter is pending the ALJ's decision.

Bud Antle, Inc., 2012-CE-007-SAL (alleged refusal to provide information)
The hearing closed on March 12, 2013. The post-hearing briefs are due April 12, 2013.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

Corralitos Farms, LLC, 2012-RC-004-SAL
The ALJ issued his decision on March 1, 2013. Exceptions to the decision are due April 4, 2013. Reply briefs are due April 18, 2013.

CASES PENDING BOARD DECISION OR ACTION:

D'Arrigo Bros. of California, 2010-RD-004-SAL
Exceptions filed August 28 and 29, 2012.
Replies filed November 9, 2012.

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

Exceptions filed February 11, 2013.

Replies filed February 25, 2013.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

San Joaquin Tomato Growers, 2011-CE-021-VIS

On March 21, 2013, the Board issued an order granting General Counsel's request for leave to seek court order requiring I.S.A. Contracting Services, Inc. to comply with the investigative subpoena issued by the General Counsel. (Admin Order No. 2013-16)

San Joaquin Tomato Growers, 2011-CE-021-VIS

On March 21, 2013, the Board issued an order granting General Counsel's request for leave to seek court order requiring San Joaquin Tomato Growers, Inc. to comply with the investigative subpoena issued by the General Counsel. (Admin Order No. 2013-17.)

Ace Tomato Company, Inc., 93-CE-37-VI

On March 21, 2013, the Board issued an order denying Respondent's request to take a deposition of Dr. Philip Martin. (Admin Order No. 2013-18.)

Gerawan Farming, Inc., 2013-MMC-002

On March 29, 2013, the Board issued an order dismissing the UFW's request for mandatory mediation and conciliation. (Admin. Order No. 2013-19.)

Ace Tomato Company, Inc., 93-CE-37-VI

On April 2, 2013, the Board issued an order granting Respondent's motion for reconsideration of the Board's March 21, 2013 order denying Ace's request for deposition of Dr. Philip Martin. (Admin. Order No. 2013-20.)

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. On November 8, 2012 the petitioner, San Joaquin Tomato Growers, Inc., filed a petition for writ of review and requested an immediate stay. On November 16, 2012 the ALRB filed its opposition to the request for stay. On November 28, 2012 the Board filed the certified record. The Petitioner's opening brief was filed February 1, 2013. The Board's response brief was filed

March 18, 2013. The UFW's brief was filed March 19, 2013. Petitioner's reply brief is due May 10, 2013.

George Amaral Ranches, Inc., 2012-MMC-003

On November 20, 2012, the Board issued an order directing the United Farm Workers of America (UFW) and George Amaral Ranches, Inc. (Employer) to participate in the mandatory mediation and conciliation process set forth in Labor Code sections 1164-1164.13 and sections 20400-20408 of the Board's regulations. The UFW was first certified as the exclusive collective bargaining representative on July 24, 2012. The UFW filed its declaration requesting mandatory mediation and conciliation on November 9, 2012, and the Employer did not file an answer to the UFW's request. On December 3, 2013, Annie Song-Hill, Interim Chief of California State Mediation Services, informed the parties that Matthew Goldberg has been informed that he has been selected by the parties as the mediator in this matter. The parties have participated in ten (10) negotiation sessions and met with the mediator in three (3) sessions. Mediation in Amaral is now complete. The parties have ten days to complete their submissions. The mediator will be out of the country through April 19, 2013, and will issue a recommendation when he returns.

Arnauado Brothers, Inc., 2013-MMC-001

On February 4, 2013, the UFW filed a declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Arnauado Brothers, Inc. to mandatory mediation and conciliation. Arnauado Brothers grows tomatoes and other crops in San Joaquin County. The employer's response was received on February 8, 2013. On February 13, 2013 the Board granted the UFW's request and issued an order directing the parties to mandatory mediation and conciliation. The parties have selected Matthew Goldberg as the mediator/arbitrator in this case and will be scheduling a conference with him in the near future. Mediation dates have been scheduled in May though the mediator has some cancellations in the early part of the month and would like to move this matter to that time.

Gerawan Farming, Inc., 2013-MMC-002

On March 22, 2013, the UFW filed a declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Gerawan Farming, Inc. to mandatory mediation and conciliation. Gerawan Farming is engaged in the growing of stone fruits, including peaches, plums, nectarines and apricots. At the time of the election in 1990, Gerawan Farming had approximately 1331 employees. The UFW was certified at the company on July 8, 1992 and has requested bargaining with the employer in July 1992, November 1994 and October 12, 2012. On March 28, 2013, the employer filed an answer, a brief in support of the answer, and a motion to dismiss the UFW's declaration. On March 29, 2013, the Board issued an order dismissing the UFW's declaration without prejudice.

Gerawan Farming, Inc., 2013-MMC-003

On March 30, 2013, the UFW filed a new declaration requesting mandatory mediation and conciliation (MMC). The employer's answer is due on April 8, 2013. The matter is pending receipt of the employer's answer to the MMC petition.

COURT LITIGATION:

ALRB v. Ace Tomato Co., Inc., Case No. 39-2012-00287876-CU-PT-STK (San Joaquin County Superior Court)

On October 4, 2012, the General Counsel (GC) was granted leave by the Board to seek enforcement of two outstanding investigative subpoenas related to three unfair labor practice charges against Ace Tomato Co., Inc. On October 5, 2012, she filed an ex-parte Application for enforcement of the subpoenas in San Joaquin Superior Court in Stockton, CA. The Ex-Parte hearing was calendared for 8:15 a.m. on October 9, 2012 in front of Judge Linda Lofthus. Ace sought to have the matter transferred to Judge Barbara Kronlund, arguing that the present subpoena enforcement action was substantially related to a prior temporary restraining order application heard by Judge Kronlund. Both parties met initially with Judge Lofthus in chambers. However, after a break in which Judge Lofthus conferred with Judge Kronlund, the matter was transferred to Judge Kronlund. Judge Kronlund refused to hear the matter ex-parte and set a hearing on shortened time for October 24, 2012. After Ace represented to the Court that all matters were stayed based on the October 17, 2012 stay order issued by the 5th District Court of Appeal in Case No. F065589, Judge Kronlund removed the matter from calendar, without proper notice to the ALRB. On October 22, 2012, the General Counsel filed an Opposition to the Respondent's Notice of Stay of the Proceedings to Enforce the General Counsel's subpoenas. There has not yet been a response from the Court to the General Counsel's opposition.

Ace Tomato Company, Inc., F065589

On August 23, 2012 Ace Tomato Company (Ace) sought court review of the Board's decision in 38 ALRB No. 6 by filing a petition for writ of review with the Fifth Appellate District Court of Appeals. In 38 ALRB No. 6, pursuant to the Mandatory Mediation and Conciliation provisions of the Agricultural Labor Relations Act, the Board affirmed in full Mediator Matthew Goldberg's report fixing the terms of a collective bargaining agreement between Ace and the United Farm Workers of America (UFW), the certified representative. Ace also requested a stay of the Board's decision. The Board and UFW both filed a preliminary opposition to the appeal. At the court's invitation, the Board and the UFW filed letter briefs on the issue of venue, arguing that proper venue was in the 3rd District Court of Appeal. On October 10, 2012, Ace filed its opening brief on the merits of the petition, along with a motion to augment the record to include a sample agreement between Ace and one of its labor contractors. On October 17, 2012, the 5th District Court of Appeal issued two orders. One order denied the ALRB's and UFW's request to transfer the case to the 3rd District Court of Appeal, without prejudice to filing a request directly with the

California Supreme Court. The other order granted Ace's request that the Board's decisions before the court on review be stayed pending further order or determination of the merits of Ace's petition for writ of review. On October 25, 2012, the UFW filed an opposition to Ace's motion to augment the record and the ALRB filed a response joining in the UFW's opposition. On October 30, 2012, the Board filed with the 5th DCA a petition for rehearing on proper venue. On November 14, 2012, the Board filed its response brief on the merits. The UFW filed its response on December 7, 2012. Ace filed its reply brief on January 16, 2013. On February 14, 2013, the 5th DCA decided to review the case in full, i.e., issue a writ and set oral argument at a date to be set later. The court also has denied the Board's Petition for Rehearing on Proper Venue, and has indicated that the order staying the Board's decision and order issued by the court on October 17, 2012, will remain in effect.

San Joaquin Tomato Growers, F066074

On November 8, 2012, San Joaquin Tomato Growers, Inc. (Petitioner), filed in the 5th District Court of Appeal a petition for writ of review and requested an immediate stay of the Board's decision. On November 16, 2012, the ALRB filed its opposition to the request for stay. On November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. The Board filed the certified record on November 29, 2012. Also on November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. On February 1, 2013 the petitioner filed its opening brief. The Board's response brief was filed March 18, 2013. The UFW's response brief was filed on March 19, 2013. The Petitioner's reply brief is due May 10, 2013.

RBI Packing LLC, Riverside Superior Court

On February 7, 2013, the General Counsel filed an ex parte application for a temporary restraining order ("TRO") to prevent the RBI Packing LLC, from terminating two crews of lemon pickers, allegedly in retaliation for their union activities. The matter was heard by Commissioner Barkley in Riverside Superior Court on Friday, February 8, 2013. Commissioner Barkley did not grant a TRO. However, Commissioner Barkley set an order to show cause hearing for February 15, 2013 to allow the General Counsel to seek a preliminary injunction ordering reinstatement and an end to discrimination against workers who were fired for exercising their rights.

On February 15, 2013 Riverside County Superior Court Judge Perantoni granted the ALRB General Counsel's application for a preliminary injunction pursuant to California Labor Code section 1160.4. Judge Perantoni found that the General Counsel had reasonable cause to believe that RBI Packing, LLC discriminatorily fired two crews of lemon harvesters upon learning that the workers were organizing with the United Farm Workers of America ("UFW") union. Judge Perantoni issued a preliminary injunction to remain in effect until the ALRB's charge is resolved through its administrative proceeding. The Judge further ordered RBI Packing, LLC to cease

and desist from discriminating against employees who were organizing with the UFW, to cease and desist from refusing to farm the lemon ranch in retaliation for the workers' union activities, and to first offer all agricultural jobs (at the same or superior wages and conditions) that become available to the employees who engaged in organizing activity, and that the ALRB shall have access to the ranch and to payroll records in order to monitor and ensure compliance with the Preliminary Injunction. RBI Packing, LLC has approximately 55-60 non-supervisory agricultural workers.

MISCELLANEOUS:

Public Record Act Request

James W. Sullivan, many years ago a Salinas Regional ALRB Attorney and now a private practice attorney, filed a public record act request for copies of four currently effective collective bargaining agreements entered into by the United Farm Workers and submitted to the Board pursuant to Regulation Section 20450. Following an exchange of emails, the documents were identified and sent to him electronically today, April 3, 2013.

Fair Political Practice Commission

Statutorily required filings with the Fair Political Practice Commission were submitted on April 2, 2013.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – Within the next week the Chair and General Counsel plan to review newly developing materials for a handout.
- b. Annual Report – The Executive Secretary provided a status report on the project. .
- c. Election Manual – Work continues on the updated manual. We are awaiting feedback from regions.
- d. Master Calendar - The Executive Secretary provided a status report on the calendar of upcoming projects.

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:

SB 25 (Steinberg)

- Repeals section 1164.11 of the ALRA.
- Allows for a declaration for MMC to be filed, for unions certified prior to January 1, 2003, 90 days after a demand for bargaining, eliminating the prerequisites of a year of impasse, no prior contract, and an employer ULP as provided in section 1164.11.
- Prohibits a stay of an ALRB order implementing a mediator's MMC report unless the appellant demonstrates by clear and convincing evidence that he will be irreparably harmed and has a likelihood of success on the merits.
- Status: As of March 14, passed out of the Senate Labor and Industrial Relations Committee; read a second time and ordered to third reading.

AB 729 (Roger Hernández)

- Creates an evidentiary privilege for union agent – represented worker communications.
- Status: As of March 4, referred to the Assembly Judiciary Committee.

AB 73 (Blumenfield) and SB 65 (Leno).

- 2013-2014 Budget bills.
- AB 73 was referred to the Assembly Committee on Budget on March 14; SB 65 was referred to the Senate Committee on Budget and Fiscal Review on January 10.

Update, if any, on bills of interest to ALRB Stakeholders

AB 175 (V. Manuel Perez)

- Establishes the Uncovered Health Trust Fund to provide health care coverage to workers ineligible for health care under federal and state programs and authorizes voluntary contributions to be deposited into the trust.
- Status: Re-referred to the Committee on Health on March 20.

AB 123 (Bonta)

- Requires a school district, in teaching social science, to include instruction on the contributions of Filipino-Americans to the farm labor movement in California.
- Status: Passed from the Assembly Committee on Education as amended on April 1; re-referred to Appropriations.

ACR 27 (V. Manuel Perez)

- Urges all Californians to observe Cesar Chavez's birthday on March 31 as a day of service.
- Status: Amended, adopted and referred to the Senate on April 1.

- 9. Personnel – *Progress on filling the following ALRB positions: Staff Services Manager I (Chief of Administration) – Sacramento; Attorney III/IV - Office of the General Counsel – Sacramento; Senior Accounting Officer (Specialist) – Sacramento; Associate Personnel Analyst – Sacramento; Associate Information Systems Analyst – Sacramento; Legal Counsel/Assistant General Counsel I/II – Sacramento, Salinas, El Centro and Visalia; Administrative Assistant I – Sacramento, Associate Governmental Program Analyst – Sacramento, and Accountant Trainee – Sacramento.*** Job offers have been made for Accounting Trainee, Associate Information Systems Analyst, Associate Governmental Program Analyst, and Administrative Assistant I.

10. Roundtable

Designated ALRB employees must complete the Ethics Training Course for State Officials by May 1, 2013.

The public meeting adjourned at 10:15 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.