

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 21, 2012

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén (by conference call)
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Wender and Robinson; Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for March 7, 2012, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** Chairwoman Shiroma reported on the bi-weekly Labor and Workforce Development Agency (LWDA) meeting held yesterday. Agencies shared the various efficiencies each is implementing. The hiring freeze has been lifting for the LWDA agencies as all requirements have been met. Budget Letter 12-03 will eliminate budgeted salary savings and allocate that amount to accurately reflect operation funds being expended. BL 12-03 also requires the elimination of positions historically held vacant to support required salary savings. This process will not result in a change to each department's total state operations funding. The ALRB has transitioned to Employment Development Department handling all of ALRB accounting functions. The ALRB budget passed through the Assembly budget committee with no problems. A Senate budget committee prehearing will be held at 11 a.m. on Friday, March 23. No problems have been identified.
4. **General Counsel Report:** General Counsel Torres-Guillén reported on activities in the regional offices. During the last two weeks, Ms. Torres-Guillén went to Oxnard with staff to monitor a possible strike election which did not occur, held a training session for growers, and went in to the Superior Court in Santa Cruz County seeking a temporary restraining order regarding an employee. Training for newly hired attorneys will be held in Sacramento the week of March 26th.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

VB Zaninovich	2012-NA-001-VIS	March 6, 2012
Castle Rock Vineyards	2012-NA-002-VIS	March 6, 2012
Delano Farms	2012-NA-003-VIS	March 6, 2012
Lucich Farms	2012-NA-004-VIS	March 7, 2012
Sunview Farms	2012-NA-005-VIS	March 7, 2012
Fourstar Fruit	2012-NA-006-VIS	March 7, 2012
Dulchich Farms	2012-NA-007-VIS	March 7, 2012
Montalvo Farms, LLC	2012-NA-002-SAL	March 10, 2012
Four Seasons P. Packing Inc.	2012-NA-003-SAL	March 12, 2012

NOTICE OF INTENT TO ORGANIZE (NO)

Montalvo Farms, LLC	2012-NO-001-SAL	March 10, 2012
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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 the employer since October 27, 2010 and continuing, 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 and the matter is pending the Investigative Hearing Examiner's decision.

California Florida Plant Company, 2011-RC-001-SAL

On February 4, 2011, the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of California Florida Plant Company. The employer is a nursery located in Salinas with approximately 41 employees. An election was held on February 11, 2011, in Salinas with the following results:

UFW	12
No Union	7
Unresolved Challenged Ballots	<u>5</u>
Total	24

As the number of unresolved challenged ballots is sufficient to affect the outcome of the election (a tie vote results in a union loss), the Regional Director will investigate the challenges and issue a report. On February 17, 2011, the employer filed objections to the election. The Regional Director issued his report on challenged ballots on May 9, 2011. On May 19, 2011, the employer filed exceptions to the report. On August 1, 2011 the Board issued its decision on challenged ballots. On August 18, 2011 the ALRB was informed that the Company permanently closed its facility a few months ago. The investigative hearing opened on September 28, 2011 and closed prematurely due to the unavailability of a witness. The hearing resumed and closed on November 2, 2011. The post-hearing briefs were filed on January 12, 2012. The Investigative Hearing Examiner's decision in California Florida Plant Company, Case No. 2011-RC-001-SAL, issued on February 8, 2012. Exceptions were due February 24, 2012. As neither party filed exceptions to the IHE decision, the Executive Secretary issued an order making the decision final on March 5, 2012. On March 13, 2012 the Salinas Regional staff opened and counted the five resolved challenged ballots and issued a revised and final tally. That tally showed the following results:

UFW	12
No Union	12
Unresolved Challenged Ballots	<u>0</u>
Total	24

On March 20, 2012 the employer filed a request to withdraw its election objections. On March 21, 2012, the Executive granted the employer's request and issued a certification of results of election as neither choice on the ballot received a majority vote. This case is now fully resolved and will be removed from this report.

Sun World, 2010-UC-1-VIS

The UFW filed a unit clarification petition involving Sun World and a number of other entities on September 14, 2010. The employer requested and was granted an extension of time to file its response to the petition by November 12, 2010. The UFW was granted an extension through December 15, 2010 to respond to the region's

request for information. The union's response was received on December 15, 2010. The Regional Director granted the Employer an extension February 1, 2011, to file a further response. The region received the additional information and the UFW requested the opportunity to respond to the information received. Their response is due May 16, 2011. On October 12, 2011 the Regional Director requested that the union's unit clarification petition or amendment of certification be set for hearing. On October 13, 2011 the Executive Secretary granted that request and set the matter for hearing for October 26, 2011. The hearing opened and closed on October 26, 2011. The post-hearing briefs were due January 20, 2012. On December 19, 2011 the UFW requested a three-week extension of time to file its post-hearings brief. The Executive Secretary granted the union's request. Both the UFW and Employer filed their post-hearing briefs. On February 28, 2012, the IHE issued his decision on the UFW's unit clarification petition. The UFW filed its exceptions to the IHE's decision on March 12, 2012. Reply briefs were due March 22, 2012. On March 21, 2012, the Executive Secretary granted the Employer request for a four-day extension of time to file reply to exceptions. The reply brief is now due Monday, March 26, 2012.

COMPLAINT REPORT

COMPLAINTS ISSUED

Premiere Raspberries, LLC, dba Dutra Farms, Case No. 2012-CE-003-SAL

On March 13, 2012, the General Counsel filed a complaint against Premiere Raspberries, LLC, dba Dutra Farms, Case No. 2012-CE-003-SAL. The complaint alleges that the respondent unlawfully terminated Dalia Santiago because she engaged in protected concerted action for better working conditions and engaged in union activity during a nascent union organizational campaign.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

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

Pre-hearing conference March 26, 2012

Hearing May 1, 2012

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

Pre-hearing conference April 24, 2012

Hearing June 5-14, 2012

Bayou Vista Dairy, 06-CE-9-VI

Pre-hearing conference June 1, 2012
Hearing July 9-20, 2012

Premiere Raspberries, LLC, 2012-CE-003-SAL
To be scheduled

CASES PENDING ALJ/IHE DECISION

D'Arrigo, 2010-RD-004-SAL
The matter is pending the IHE's decision

ALJ/IHE DECISIONS ISSUED:
None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

Sun World, 2010-UC-1-VIS
Exceptions filed March 12, 2012
Reply briefs are due March 26, 2012

San Joaquin Tomato Growers, 93-CE-38-VI
Exceptions were received March 5, 2012
Reply briefs are due April 20, 2012

CASES PENDING BOARD DECISION OR ACTION:
None.

CASES SETTLED OR RESOLVED:
None.

COMPLIANCE CASES CLOSED:

Temple Creek Dairy, Inc., Case No. 2009-CE-048-VIS
The request for review of the closing letter in Temple Creek Dairy, Inc., Case No. 2009-CE-048-VIS et al. was due March 8, 2012. As no request was received, this matter is now final and closed.

CASES TRANSFERRED TO BOARD FOR DECISION:

Hiroshi Ukegawa et al., 75-CE-59-R
Notice of Motion and Motion to Close Cases and to Make Cases Eligible for Payout from AERF were filed March 6, 2012. Responses to the motions were due March 19, 2012. No responses have been received to date.

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. The ALJ issued his decision on March 6, 2012. Exceptions are due March 19, 2012. The UFW did not file any exceptions. Reply briefs are not provided for in the Board's regulations.

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 is due March 22, 2012.

COURT LITIGATION:

Premier Raspberries LLC dba Dutra Farms, Superior Court Case No. CV173564

On March 15, 2012, the ALRB General Counsel filed an application for a Temporary Restraining Order and Order to Show Cause at the Superior Court of the State of California in Santa Cruz County against Premier Raspberries, LLC dba Dutra Farms. Premier Raspberries is located in the Salinas/Watsonville area and has approximately 600 to 1000 workers.

On March 1, 2012, Salinas ALRB Regional Office received unfair labor practice charge No. 2012-CE-003-SAL. Based on the facts uncovered during the investigation of that matter, the General Counsel decided to seek an injunction. The requested Temporary Restraining Order sought to enjoin Premier Raspberries from engaging in

conduct which the General Counsel has reasonable cause to believe constitutes unfair labor practices in violation of Sections 1153 (a), (b) and (c) of the Act. The General Counsel also sought an affirmative order to reinstate employee Dalia Santiago. On March 15, 2012 the Judge granted the TRO. A hearing on the General Counsel's request for a permanent injunction is scheduled for April 11, 2012 at 9 a.m.

MISCELLANEOUS:

We have recently had requests for Election, ULP and Operations Manuals.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—Analyst Massie reported on status of the CES email migration project. A meeting has been scheduled with LWDA Agency Information Officer Carlos Quant to review the ALRB Case and Time Tracking System on Friday, April 6, at 9:30 a.m.
- b. Education/Outreach: Our portion of the education/outreach contract was completed and returned to UC Berkeley.
- c. Election Manual: Nothing to report.
- d. Master Calendar

The Executive Secretary reported on the progress on reports due.

7. Regulations

- a. Update on Regulations to Implement Senate Bill No. 126 – After considering public comment, on February 1, 2012, the Board adopted the regulations with clarifying changes to sections 20363, 20365, and 20400. While the proposed regulations were pending review by the Office of Administrative Law (OAL), it came to the Board's attention that some of the changes arguably could be termed "substantive" and thus may have required a 15-comment period. Accordingly, in order to ensure complete compliance with the letter of the rulemaking requirements of the Administrative Procedure Act (Gov. Code § 11340, et seq.), on March 21, 2012, the Board voted 3-0 to withdraw the rulemaking file from OAL and rescinded its February 1, 2012 adoption of the proposed regulations. The Board will issue at 15-day Notice of Changes to provide the public with the opportunity to comment on the changes made to the language of the amendments as originally proposed.
- b. Discussion of Potential Subjects for Rulemaking In 2012—Electronic Filing: The electronic filing practices of the Public Employees Relations Board were reviewed. The next step will be to provide a detailed set of questions for the ALRB Ad Hoc Committee to review.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB*—Nothing to report in terms of bills. The Governor’s Office is requesting we submit a form naming a legislative coordinator and assistant.

9. Personnel – The search for a Business Services Officer continues. The Student Assistant announcement for the Board position has been posted to the Foundation for California Community Colleges site. Revival of the Chief of Administration position which was cut several years ago needs to be reviewed. Member Rivera-Hernandez will be reissuing the announcement regarding an unpaid extern summer job.

10. Roundtable –

Member Rivera-Hernandez addressed the Western Growers Association on Wednesday, April 14.

The United Farm Workers 50th Anniversary Convention will be held in Bakersfield May 17-20, 2012.

Jason Resnick, General Counsel for Western Growers Association, will be discussing food safety issues around access at the April 18th ALRB Board meeting.

The public meeting adjourned at 11:50 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.