

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**April 4, 2012**

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

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for March 21, 2012, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** Chairwoman Shiroma reported on Budget Letter 12-03, due on Monday, April 9, 2012. The Labor and Workforce Development Agency (Labor Agency) is assisting with our budget and will file the necessary report on our behalf. The ALRB budget is on calendar for review by the Senate Budget and Fiscal Review Committee on April 11, 2012. Chairwoman Shiroma attended the Labor Agency senior management meeting. The Department of Finance is preparing to issue a new set of requirements on travel claims regarding reconciliation of travel advances. The ALRB received the California State Employee Charitable Campaign platinum award.
- 4. General Counsel's Report:** General Counsel Torres-Guillén reported on the status of cases in the regions. ALRB employees participated in outreach events involving approximately 245 workers. Regional staff spoke to crews, supervisors and owners, in response to a possible strike at Nakamura Farms on Friday, March 30, 2012. Regional staff will return to Nakamura Farms on Friday, April 6, to speak to the remaining crews. The ALRB opened an office in the Department of Industrial Relations Workers' Compensation Office in Oxnard, California. The office is currently staffed by Attorney Jessica Arciniega. Visalia Field Examiner Reynaldo ValVerde retired last week. Administrative Assistant Allison Sakauye is leaving on April 20, 2012, to join the staff at the State Controller's Office. Attorney Rafael Ivan

Hernandez resigned on March 30, 2012. Attorney Silas Shawver will commence working in the Visalia Regional Office on April 30<sup>th</sup>.

## 5. Executive Officer Report:

### ELECTION REPORT

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

Catalinos Berry Farms, LLC	2012-NA-004-SAL	March 21, 2012
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Nakamura Sales Corporation (aka J Nakamura Berry Farms or Nakamura Berry Growers)	2012-NA-005-SAL	March 26, 2012
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D.W. Berry Farms, LLC	2012-NA-006-SAL	April 3, 2012
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#### NOTICE OF INTENT TO ORGANIZE (NO)

Catalinos Berry Farms, LLC	2012-NO-002-SAL	March 21, 2012
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Nakamura Sales Corporation (aka J Nakamura Berry Farms or Nakamura Berry Growers)	2012-NO-003-SAL	March 26, 2012
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D.W. Berry Farms, LLC	2012-NO-004-SAL	April 3, 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, 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, and the matter is pending the Investigative Hearing Examiner's decision.

### **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 was filed March 26, 2012. The matter is pending decision by the Board.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED:**

None.

### **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 held 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**

Pre-hearing conference August 28, 2012

Hearing September 11-24, 2012

**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:**

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

Exceptions received March 5, 2012

Reply briefs due April 20, 2012

**CASES PENDING BOARD DECISION OR ACTION:**

None.

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

**Sun World, 2010-UC-1-VIS**

Exceptions filed March 12, 2012

Reply briefs filed March 26, 2012

## **BOARD DECISIONS:**

### **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. On March 23, 2012, the Board granted the General Counsel's motion to close the case and also to make the cases eligible for payout from AERF. (Admin. Order No. 2012-04.)

### **San Joaquin Tomato Growers, Inc., 2011-MMC-001**

On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. See 38 ALRB No. 2.

### **Ace Tomato Company, Inc., 2012-MMC-001**

On March 29, 2012, the Board granted the UFW's request for mandatory mediation and conciliation. (Admin. Order No. 2012-05.)

## **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). Within seven days of the receipt of the list of mediators, the parties shall either select a mediator from the list or mutually designate a mediator from a list

of all qualified mediators maintained by the State Mediation and Conciliation Service. Board Regulations section 20403.

**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). Within seven days of the receipt of the list of mediators, the parties shall either select a mediator from the list or mutually designate a mediator from a list of all qualified mediators maintained by the State Mediation and Conciliation Service. Board Regulations section 20403.

**COURT LITIGATION:**

**Premier Raspberries LLC dba Dutra Farms**

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 9:00 a.m.

**MISCELLANEOUS:**

None.

**6. Special Projects**

- a. Information Technology Committee: Update/Case Tracking System—  
Chairwoman Shiroma and Analyst Massie provided an update on the move to California Government Enterprise Network (CGEN). Agency Information Officer Carlos Quant requested that we reschedule the meeting regarding the Case Tracking System. Analyst Massie and Consultant Guida will explore the use of Google Translate on the ALRB website.

- b. Education/Outreach—The contract with UC Berkeley to assist with education and outreach efforts was finalized.
- c. Election Manual—Assistant General Counsel Blanco and Senior Board Counsel Wender will meet to prioritize areas for review.
- 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** – Nothing to report. No comments have been received.

**(b) 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).* Senior Board Counsel Wender will draft questions regarding electronic filing to be submitted to the Ad Hoc Committee.

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

**AB 2676, as introduced, Committee on Labor and Employment. Unemployment insurance: use of information.**

Under existing law, the information obtained in the administration of the Unemployment Insurance Law is for the exclusive use and information of the Director of Employment Development in the discharge of his or her duties and is not open to the public. However, existing law requires the director to permit the use of the specified information for specified purposes, and allows the director to require reimbursement for direct costs incurred. Existing law provides that a person who knowingly accesses, uses, or discloses this confidential information without authorization is guilty of a misdemeanor.

This bill would require the director to provide the Agricultural Labor Relations Board with information for use in the investigation or enforcement of the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act. By providing this information to the Agricultural Labor Relations Board, this bill would expand the crime related to the unauthorized disclosure of this information, and impose a state-mandated local program.

This bill was introduced on March 5, 2012. The bill was referred to the Committees on Labor and Employment and Insurance on March 22, 2012.

## 9. Personnel – Interviews for the Board’s Student Assistant position will be held on Thursday, April 5, 2012.

## **10. Roundtable**

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

Upcoming Board meetings for May will be changed from the first and third Wednesday of the month to Wednesday, May 9, and Tuesday, May 22, 2012.

General Counsel Torres-Guillén will participate in the Saqui Law Group's 1st Annual Ag-Employer Advisory Conference on Tuesday, April 17, 2012, in Salinas, California.

Board Member Bert Mason and General Counsel Sylvia Torres-Guillén are scheduled to speak at a workshop organized by AgSafe at Harris Ranch on May 15, 2012. The general topic is the amendments to the Agricultural Labor Relations Act made by Senate Bill 126. AgSafe is a non-profit employer organization dedicated to the prevention of illness and injury among those working in agriculture.

The public meeting adjourned at 11:20 a.m.

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