

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**June 6, 2012**

Time: 1:35 p.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, Robinson and Wender; and Analyst Massie

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for May 22, 2012, were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chair's Report:** Since our last Board meeting there was an Assembly Budget Committee Hearing. The Senate moved \$200,000 from the Board budget to the General Counsel budget and the Assembly Budget Committee voted to approve it. A subcommittee consisting of Chairwoman Shiroma and Member Rivera-Hernandez will review existing contracts. Chairwoman Shiroma reported on matters discussed at the Labor and Workforce Development Agency (LWDA) meeting.
4. **General Counsel's Report:** General Counsel reported on the status of cases in the regions. She also shared she met with Ben Ebbink, Chief Consultant to the Assembly Labor Committee and a representative from the Employment Development Department (EDD) regarding EDD concerns with language proposed in AB 2676 to authorize ALRB access to wage data collected by EDD. She will arrange a follow-up meeting to include the Chair.

## 5. Executive Officer Report:

### ELECTION REPORT

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

One new NA and an NO have been filed.

On May 23, 2012 the UFW filed an NA at Nakamura Sales Corporation, Case No. 2012-NA-011-SAL.

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

Nine (9) NOs have been filed in the current fiscal year. All but one has met the 10% showing of interest.

On May 23, 2012 the UFW filed an NO at Nakamura Sales Corporation, Case No. 2012-NO-008-SAL. The showing of interest was met May 29, 2012.

<b>Filing Date</b>	<b>Filing Party</b>	<b>Employer</b>	<b>10% Met</b>
9/26/2011	Tmster Local 890	Eckhart Seed Company	Yes
3/13/2012	UFW	Montalvo Farms, LLC	Yes
3/21/2012	UFW	Catalinos Berry Farms, LLC	Yes
3/27/2012	UFW	Nakamura Sales Corporation aka J. Nakamura Berry Farms	Yes
4/3/2012	UFW	D.W. Berry Farms, LLC	Yes
4/4/2012	UFW	Premiere Raspberries, LLC dba Dutra Farms	Yes
4/10/2012	UFW	Rio Mesa Farms, LLC	Yes
4/12/2012	UFW	Santa Rosa Berry Farms, LLC	No
5/23/2012	UFW	Nakamura Sales Corporation	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, and the matter is pending the Investigative Hearing Examiner's decision.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED:**

One new complaint has issued.

### **Perez Packing, Inc., Case No. 2012-CE-003-VIS**

On May 22, 2012, the Visalia Acting Regional Director issued a complaint in Perez Packing, Inc., Case No. 2012-CE-003-VIS. The complaint alleges that the respondent committed an unfair labor practice by failing to provide the UFW with information relevant to bargaining since November 8, 2011, and failing to maintain accurate employee lists with current addresses for its employees.

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

### **ONE HEARING IN PROGRESS**

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

Hearing began June 5, 2012 and is in progress. Hearing expected to continue to June 14, 2012.

### **THREE HEARINGS ARE SCHEDULED & ONE HEARING HAS BEEN TAKEN OFF CALENDAR**

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

Pre-hearing conference held March 26, 2012

Hearing August 27, 2012

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

Pre-hearing conference August 28, 2012

Hearing September 11-24, 2012

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

Pre-hearing conference September 6, 2012

Hearing October 8-12, 2012

**Bayou Vista Dairy, 06-CE-9-VI**

Hearing that was scheduled for July 9-20, 2012 was taken off calendar on June 1, 2012 as the General Counsel indicated that she had planned to withdraw the complaint.

**CASES PENDING ALJ/IHE DECISION**

**D'Arrigo Bros. of California, 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:**

None.

**CASES PENDING BOARD DECISION OR ACTION:**

None.

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

## **BOARD DECISIONS:**

### **San Joaquin Tomato Growers, 93-CE-38-VI (38 ALRB No. 4)**

The Board's decision and order issued on May 30, 2012. Any motion for reconsideration is due June 11, 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 Executive Secretary has not been advised of the meeting dates.

### **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. The parties have met for approximately 31 sessions and are discussing potential dates for the submission of final proposals, responses to final proposals and mediator's decision.

## **COURT LITIGATION:**

### **Premiere Raspberries LLC dba Dutra Farms, CV 173564**

On April 11, 2012, the court granted the General Counsel's request for an injunction. The court ordered the reinstatement of agricultural employee Dalia Santiago and ordered the company to allow ALRB access to Respondent's employees. On April 17, 2012 the court denied Respondent's request for a stay of its order, finding that its order of April 13, 2012 remained in effect, notwithstanding the provisions of Cal. Code of Civil Procedure section 916 and Respondent's notice of appeal filed April 13, 2012. Dutra Farms has also filed a Request for Stay in the 6th DCA, claiming that section 1160.4(c) removing application of CCP 916's automatic stay provisions applies only to TROs and not to preliminary injunctions. On May 16, 2012, the Superior Court held Premier Raspberries in contempt for failing to comply with its earlier order requiring worker reinstatement and ALRB noticing of employees and supervisors while the company pursued its ultimately unsuccessful appeal. The Court imposed a fifteen hundred dollars fine on Premier Raspberries.

### **Montalvo Farms, Case No. 56-2012-00416985-CU-PT-VTA**

On May 11, 2012, a Ventura County Superior Court Judge ruled in favor of a Montalvo Farms employee and ordered the employee be rehired. The employee returned to work on May 12th. ALRB staff provided Montalvo Farms workers and supervisors with information regarding rights afforded workers under the Agricultural Labor Relations Act.

## **MISCELLANEOUS:**

On May 25, 2012, Ed Blanco and J. Antonio Barbosa were given authorization to originate contracts for their respective areas of administration within the ALRB. J. Antonio Barbosa has delegated authority with respect to matters involving Board Administration. Ed Blanco has delegated authority with respect to matters involving General Counsel Administration and Administration Services.

## **6. Special Projects**

- a. Information Technology Committee: Update/Case Tracking System—A meeting was held with Consultant Steve Guida to review the status of pending projects. Mr. Guida will assist Nickolas Saldivar learning the case tracking system. Mr. Guida will also develop a training program on Microsoft Word, Excel, Outlook and PowerPoint for the agency.

Executive Secretary Barbosa will attend a CIO meeting tomorrow at 3 p.m. to discuss possible IT initiatives within LWDA that can be achieved within a 2-3 year period.

- b. Education/Outreach—*UC Berkeley outreach projects*—Proposed questions for employers have been received and will be circulated to the Board and Executive Secretary for review.
- c. Election Manual—Senior Board Counsel Wender continues working on the election manual.
- d. 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).* The letter to the ad hoc committee has been finalized and will go out tomorrow.

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

### **AB 276, as amended, Alejo, Local government; financial reports. (sic)**

As amended on August 18,

Existing law specifies the time for filing a declaration by an agricultural employer or a certified labor organization representing agricultural employees that the parties have failed to reach a collective bargaining agreement, thus triggering mandatory mediation. Under existing law, the declaration may be filed 90 days after a renewed demand to bargain where the parties have failed to reach agreement for at least one year, the employer committed an unfair labor practice, and the parties have not previously had a binding contract between them or 180 days after an initial request to bargain. This bill would repeal the provision specifying the conditions necessary for making a renewed demand to bargain and would instead provide that the declaration may be filed 180 days after any request to bargain.

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On June 4, 2012, the bill was amended and re-referred to committee. The June 4 amendments stripped the bill of provisions relating to mandatory mediation and replaced it with an entirely different subject, to wit:

*This bill would authorize the Board of Supervisors of the County of Monterey to establish, by ordinance, the Central Coast Hospital Authority to manage, administer, and control the Natividad Medical Center and other health care facilities, as defined, in the county, as specified.*

Therefore, this bill no longer would have any effect on 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 passed by the Assembly on May 29, 2012, and is now before the Senate.

9. **Personnel** – The ALRB hired Hau Cam as its new Accounting Officer and Nickolas Saldivar III as its Business Services Officer. The General Counsel announced the hiring of Irma Luna as a field examiner in the Oxnard office and Vivian Velasco Paz as an attorney in the Visalia office. Attorney Matina McDaniel tendered her resignation on June 4th.

**10. Roundtable**

Nothing to report

The public meeting adjourned at 2:45 p.m.

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