

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 18, 2012

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck, Robinson and Wender; Supervising Staff Counsel De La Cruz and Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for June 20, 2012, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** The 2012-13 Agricultural Labor Relations Board (ALRB) budget has been approved. Labor and Workforce Development Agency (LWDA or Agency) sent a report to the ALRB chronicling the assistance provided to the ALRB by Agency during fiscal year 2011-12. Agency has suggested improvements to the administrative functions of the ALRB and has requested responses to the suggested recommendations be submitted to Agency by July 30, 2012.
- 4. General Counsel's Report:** The General Counsel provided an update of the status of open cases in the regions. The regional offices conducted two 48-hour strike elections, one in June and one in July. The makewhole specification in Ace Tomato Company should issue within the next month.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
6/18/2012	UFW	George Amaral Ranches, Inc.

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.

Filing Date	Filing Party	Employer	10% Met
09/26/2011	Tmster Local 890	Eckhart Seed Co.	Yes
03/13/2012	UFW	Montalvo Farms, LLC	Yes
3/21/2012	UFW	Catalinos Berry Farms, LLC	Yes
03/27/2012	UFW	Nakamura Sales Corporation aka J. Nakamura Berry Farms	Yes
04/3/2012	UFW	D.W. Berry Farms, LLC	Yes
04/4/2012	UFW	Premiere Raspberries, LLC dba Dutra Farms	Yes
04/10/2012	UFW	Rio Mesa Farms, LLC	Yes
04/12/2012	UFW	Santa Rosa Berry Farms, LLC	No
05/23/2012	UFW	Nakamura Sales Corporation	Yes
06/18/2012	UFW	George Amaral Ranches, Inc.	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 exceptions to the ALJ decision and also requested leave to file an exceptions brief not to exceed 120 pages. On June 20, 2012, the Executive Secretary granted both requests. The exceptions to the IHE's decision are due August 14, 2012. Reply briefs are due August 27, 2012.

George Amaral Ranches, Inc., 2112-RC-001-SAL

On June 18, 2012 the UFW filed a representation petition with the Salinas ALRB Regional Office seeking to represent the agricultural employees of George Amaral Ranches, Inc. The company grows mix leaf lettuce, red and green cabbage, celery, romaine, iceberg lettuce, broccoli, cauliflower, lollo bionda and red batavia, sweet corn, cantaloupe & watermelon. It has operations in Monterey, Santa Cruz and Santa Benito Counties and employs approximately 300 workers.

The Salinas Acting Regional Director has determined that a majority of the employees at George Amaral Ranches, Inc were on strike at the time of the filing of the election petition and, accordingly, called for a 48 hour expedited election. The election was held on June 19 and 20, 2012. The final tally of ballots yielded the following election results:

UFW	265
No Union	65
Unresolved Challenged Ballots	<u>14</u>
Total	344

The number of unresolved challenged ballots is insufficient to affect the outcome of the election and a majority of the valid ballots counted has been cast for the UFW. On June 27, 2012, the Employer filed objections to the election. On July 9, the UFW filed a motion to dismiss the Employer's election objections. On July 13, 2012, the Board

issued its decision on the Employer' election objections and issued a notice of investigative hearing scheduling this matter to be heard on August 7, 2012, in Salinas CA. On July 16, 2012, the Employer filed its reply to the UFW's motion. The matter is pending the investigative hearing.

Gargiulo, Inc., 2012-RC-001-VIS

On July 9, 2012, the United Farm Workers filed a Petition for Certification with respect to Gargiulo, Inc., a tomato grower which has approximately two hundred and sixty agricultural employees located in Merced, Madera and Fresno Counties. ALRB regional staff determined that there was a strike requiring a 48-hours strike election. The Visalia ALRB Regional Office conducted the election on July 11, 2012, at the Mendota Community Center in Mendota, CA from 3:00 a.m. to 6:00 a.m. The final tally showed the following results:

UFW	186
No Union	40
Unresolved CBs	<u>2</u>
Total	228

(Four void ballots)

The number of unresolved challenged ballots is insufficient to affect the outcome of the election and a majority of the valid ballots counted has been cast for the UFW. Election objections, if any, are due within five working days (July 18, 2012).

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

FIVE HEARINGS ARE SCHEDULED

George Amaral Ranches, 2012-RC-001-SAL

Hearing August 7, 8, & 9, 2012

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

Pre-hearing conference held March 26, 2012

Telephone Conference Call held July 10, 2012

Telephone Conference Call scheduled August 1, 2012

Hearing August 27, 2012

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

Pre-hearing conference August 21, 2012

Hearing September 11-24, 2012

Montalvo Farms, 2012-CE-004-SAL

Pre-hearing conference September 6, 2012

Hearing October 8-12, 2012

Perez Packing, Inc., 2012-CE-003-VIS

Pre-hearing conference October 18, 2012

Hearing November 5, 2012

CASES PENDING ALJ/IHE DECISION

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

Hearing ended June 14, 2012. The matter is pending the receipt of transcripts and the filing of post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

D'Arrigo Bros. of California, 2010-RD-004-SAL

Exceptions due August 14, 2012

Reply due August 27, 2012

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, Inc., 93-CE-38-VI

On June 14, 2012, both the UFW and General Counsel filed a motion for reconsideration of the Board's decision in 38 ALRB No. 4. On June 20, 2012, the Board, on its own motion, set the response due date to these motions for June 27,

2012. On June 27, 2012, the Employer filed separate oppositions to each of the motions for reconsideration. The matter is pending before the Board for decision.

George Amaral Ranches, Inc., 2112-RC-001-SAL

On July 13, 2012, the Board issued its decision on the Employer's election objections and denied the UFW's motion to dismiss the objections petition. The Board also issued a notice of investigative hearing scheduling this matter to be heard on August 7, 2012, in Salinas CA.

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 16, 2012. According to the Board's regulations, the parties may file a petition for review of the mediator's report within seven (7) days. Hence, any petition for review will be due on July 23, 2012.

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. On June 27, 2012, the mediator issued his report to the Board. On July 5, 2012, the employer filed a petition for review of that report. On July 16, 2012 the Board received the official record of the proceedings, thus triggering the 10-day period for a preliminary decision by the Board as to whether a prima facie case has been established warranting review. The matter is currently before the Board and pending 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. On July 11, 2012, the Appellant's Request for Judicial Notice was deferred for consideration with the appeal in the 6th DCA. Also on July 11th, Appellant's Reply re Motion for Judicial Notice, and Opposition to Respondent's May 9th Motion for Judicial Notice was filed.

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. A notice of settlement was filed by the ALRB on June 13, 2012. The matter is fully resolved pending compliance with the settlement. The temporary restraining order protections continue until a final administrative law judge decision issues.

San Joaquin Tomato Growers, C071434

On June 28, 2012 the UFW filed a petition for writ of review of the Board's decision in 38 ALRB No. 4. On June 26, 2012 the court informed the Board that the certified record was due on July 9, 2012. The Executive Secretary requested

and was granted a 30-day extension of time to file the record. Accordingly, the certified record is now due August 8, 2012. On July 6, 2012, the ALRB filed a motion to dismiss the petition that is pending before the court for ruling.

MISCELLANEOUS:

San Joaquin Tomato Growers, Inc., 2011-CE-021-VIS, et al.

The General Counsel has issued an investigative subpoena concerning six unfair labor practice charges in San Joaquin Tomato Growers that have not gone to complaint. The Respondent has filed a petition to revoke subpoena that is pending before the Executive Secretary for ruling.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—Analyst Massie provided an update on the progress of the consolidated email and network efforts.
- b. Education/Outreach—UC Berkeley has nearly finished interviewing selected stakeholders and interested parties. A written report should issue shortly on the first phase of the outreach project.
- c. Election Manual—Senior Board Counsel Wender continues working on revisions to the election manual and will forward sections for review as they are revised.
- 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). Responses to proposed regulation changes have been received. Board Counsel Wender will summarize the responses for the next public meeting and provide a recommendation on how to proceed.

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 original bill required 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 have expanded the crime related to the unauthorized disclosure of this information, and imposed a state-mandated local program.

This bill was introduced on March 5, 2012, and passed the Assembly on May 29, 2012. On June 26, 2012, the bill was amended and replaced the provisions relating to the ALRB with provisions providing for criminal penalties for any person who directs an agricultural employee to perform, or supervises an agricultural employee in the performance of, outdoor work without providing the employee with shade and potable water. Therefore, the bill would have no impact on the ALRB.

9. **Personnel** – California Human Resources (CalHR) has issued a management memo outlining provisions on eliminating student assistants and retired annuitants tied to SEIU Bargaining Units 1 & 4. Departments are to stop using student assistants and retired annuitants by September 1, 2012.

Vivian Velasco Paz began work as an attorney in the Visalia Regional Office on July 9, 2012.

10. **Roundtable**

General Counsel Torres-Guillén, Chairwoman Shiroma and Board Member Rivera-Hernandez will tour a pear farming operation in Courtland today at the invitation of the California Grape and Tree Fruit League.

General Counsel Torres-Guillén was a panelist at an event entitled *The Future of Foreign-Born Labor in US Agriculture* cosponsored by AGree and the Farm Foundation at the Oak Brook Hills Marriott Resort in Chicago, IL on July 10, 2012. There were approximately 40-50 participants at the conference.

The public meeting adjourned at 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.