

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 3, 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; ALJ Soble and Analyst Massie
Others Present: Bryan Little, California Farm Bureau Federation; Daniel Rounds,
California Senate Office of Research

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for September 19, 2012, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** The Chair reported the ALRB is well within its current budget. The General Counsel and Chair have been working with Labor and Workforce Development Agency (LWDA or Agency) on budget forecasting for the next fiscal year. LWDA continues to remind all departments that the Governor has issued orders restricting travel and the use of retired annuitants and students. The Chair and General Counsel would like to extend their thanks to LWDA, the Employment Development Department (EDD), and Brian Weishahn from EDD for his assistance in complying with Department of Finance Budget Letter requirements.
4. **General Counsel's Report:** The travel expense exercise covering fiscal year 2011-2012 was completed and submitted to Agency today. The State Controller's Office is transitioning between CalATERS and the new CalATERS Global for the processing of travel claims. The General Counsel updated the Board on the status of activity in the regional offices.

5. Executive Officer's Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
09/05/12	UFW	Corralitos Farms, LLC
09/10/12	UFW	Miyasaka, Inc.
09/20/12	Teamsters 890	Foothill Packing, Inc.

NOTICE OF INTENT TO ORGANIZE (NO)

Fourteen (14) NOs have been filed in the current fiscal year. All but two have met the 10% showing of interest.

Filing Date	Filing Party	Employer	10% Met
09/26/11	Teamsters 890	Eckhart Seed Co.	Yes
03/13/12	UFW	Montalvo Farms, LLC	Yes
03/21/12	UFW	Catalinos Berry Farms, LLC	Yes
03/27/12	UFW	Nakamura Sales Corporation aka J. Nakamura Berry Farms	Yes
04/3/12	UFW	D.W. Berry Farms, LLC	Yes
04/4/12	UFW	Premiere Raspberries, LLC dba Dutra Farms	Yes
04/10/12	UFW	Rio Mesa Farms, LLC	Yes
04/12/12	UFW	Santa Rosa Berry Farms, LLC	No
05/23/12	UFW	Nakamura Sales Corporation	Yes
06/18/12	UFW	George Amaral Ranches, Inc.	Yes
08/04/12	UFW	Corralitos Farms, LLC	Yes
09/05/12	UFW	Corralitos Farms, LLC	Yes
09/10/12	UFW	Miyasaka, Inc.	Yes
09/10/12	UFW	Premiere Raspberries, LLC dba Dutra Farms	No

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 the 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. On August 2, 2012, the Employer/Respondent requested a two-week extension of time to file its exceptions brief and General Counsel requested an extension of time to file its reply brief. Both requests were granted by the Executive Secretary. The employer filed exceptions to the ALJ's decision on August 28, 2012. On August 29, 2012, the UFW filed a motion to accept a late filed exception and brief. On September 5, 2012, the Employer/Respondent filed its opposition to the motion. On September 10, 2012, the Executive Secretary granted the UFW's motion and accepted the late filed exception and brief. The employer did not seek review of this ruling. Reply briefs are due on October 26, 2012.

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

On September 14, 2012, the 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. The Employer indicates that approximately half of the workers speak Mixteco Bajo. 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. The matter is pending decision by the Board.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

TWO HEARINGS ARE SCHEDULED

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

Pre-hearing conference October 18, 2012

Hearing November 5, 2012

Ace Tomato Company, Inc., 2012-CE-024-VIS

Pre-hearing conference October 10, 2012 (10 AM)

Hearing November 7, 2012

HEARINGS IN PROGRESS

None.

CASES PENDING TRANSCRIPTS OR ALJ/IHE DECISION

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

Hearing ended September 11, 2012. The matter is pending the receipt of hearing transcripts.

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

Hearing ended September 19, 2012. The matter is pending the receipt of hearing transcripts.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

Exceptions filed August 28 and 29, 2012

Replies due October 26, 2012

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

Respondent filed motion to augment the record on appeal (September 24, 2012)

Parties' responses due October 5, 2012

Exceptions due October 15, 2012

Reply due October 29, 2012

CASES PENDING BOARD DECISION OR ACTION:

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

General Counsel's Request for Special Permission to Appeal ALJ Ruling

Employer's opposition was received September 19, 2012. No replies are permitted.

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

General Counsel's Request for Special Permission to Appeal ALJ Ruling

UFW filed Statement in Support of Special Appeal to ALJ Ruling

Employer's opposition was received September 27, 2012. No replies are permitted.

CASES SETTLED OR RESOLVED:

Montalvo Farms, 2012-CE-004-SAL

On September 21, 2012, the General Counsel withdrew the consolidated complaint as the parties had reached a settlement of the charges and the settlement has been approved by the Acting Regional Director. On September 26, 2012, the Executive Secretary granted the General Counsel's request to cancel the prehearing conference and take the matter off calendar.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

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

General Counsel's Application for Special Permission for an Interim Appeal of ALJ Ruling, dated September 19, 2012. Opposition to application was received

September 27, 2012.

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. 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, if any, is due October 4, 2012.

D. Papagni Fruit Co., 2012-MMC-002

On August 16, 2012, the United Farm Workers (UFW) filed a request for mandatory mediation and conciliation pursuant to Labor Code section 1164, subdivision (a), as to the D. Papagni Fruit Company, which is located in Madera, California. On August 21, 2012, the employer filed a response. On August 24, 2012, the Board issued its decision sending this matter to mandatory mediation and conciliation. On August 24, 2012, the Executive Secretary requested a list of mediators. On August 30, 2012, the California Mediation and Conciliation State Service produced the list of mediators and the parties have seven days to either select a mediator from the list or mutually designate a mediator from a list of all qualified mediators maintained by CSMCS. On September 11, 2012, the parties selected Matthew Goldberg as the mediator in this case. The mediator and parties now need to meet and come to an agreement on a mediation schedule.

COURT LITIGATION:

Premiere Raspberries LLC dba Dutra Farms, CV 173564

On April 13, 2012, the Honorable Paul Marigonda (Superior Court of California, County of Santa Cruz) issued a Preliminary Injunction ordering Premiere Raspberries, LLC dba Dutra Farms ("Dutra Farms") to reinstate agricultural employee, Dalia Santiago, pursuant to Labor Code section 1160.4 (as amended on January 1, 2012). Dutra Farms filed its notice of appeal the same day and stated that section 1160.4(c), which prohibits a stay pending appeal, does not apply to Preliminary Injunctions because Preliminary Injunctions are not "temporary relief." Dutra Farms' opening brief with the Sixth District Court of Appeal previously due August 31, 2012 was extended to October 1, 2012. General Counsel advised that Dutra Farms will be filing a request for dismissal.

Ace Tomato Company, Inc., 2012-CE-024-VIS

On August 23, 2012, the General Counsel filed an Ex Parte Application for a Temporary Restraining Order (TRO) and Order to Show Cause related to unfair labor practice charge 2012-CE-024-VIS. This charge was filed by the UFW alleging that Ace Tomato Company had refused to implement the collective bargaining agreement, thus leaving the workers without a grievance process, seniority or wage increases. Ace Tomato Company has announced that it is selling its packinghouse and may shut down by the end of the year. The ALRB sought a TRO that would prevent Ace from refusing to implement the collective bargaining agreement, so that workers would be allowed to exercise their rights under the ALRA before the end of this harvest season, which may be their last. The hearing on the TRO was heard on August 24, 2012, in the Superior Court for the County of San Joaquin at 8:30 a.m. before Judge Kronlund in Department 11. The court addressed the parties in chambers and preferred to hear argument after Ace submitted its papers. The judge ordered the hearing continued to Monday, August 27, 2012 at 9 a.m. On August 27, 2012 the judge denied the General Counsel's request for a TRO.

Ace Tomato Company, Inc., F065589

On August 23, 2012, Ace Tomato Company, Inc., filed a petition for writ of review with the Fifth Appellate District Court of Appeals seeking review of the Board's decision affirming the mediator's decision following referral to the mandatory mediation and conciliation (MMC) provisions of the Agricultural Labor Relations Act (ALRA). On August 27, 2012, the UFW filed a preliminary opposition to the petition. On August 28, 2012, the ALRB filed its preliminary opposition. On September 4, 2012 the Board filed the certified record with the court. The matter is pending a ruling on the preliminary oppositions and/or briefing by the parties as set forth by the court (opening brief due in 35 days; response brief due 35 days and closing brief due 25 days). On September 7, 2012, the employer filed its reply in further support of motion to strike preliminary oppositions or, alternatively, application for extension of time to reply. On September 16, 2012, the employer filed informal reply on the standards for issuing a stay. On September 18, 2012, the Board filed informal reply on the appropriate venue to hear this action. The matter is pending resolutions on the motions.

MISCELLANEOUS:

The Department of General Services announced the pending expiration of the 25-Year and Retirement Awards contract held by Frank T. Marchello. This contract expires Wednesday, October 31, 2012. A competitive solicitation will be released within the next few weeks.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System— Updated information regarding the ALRB Capital Plan was submitted to EDD on September 26, 2012, for inclusion in the LWDA IT Capital Plan for 2012-13. The shared CGEN circuit project is being reviewed at Treasurer's Office and a decision is expected soon.
- b. Education/Outreach: Update on UC Berkeley Outreach Project: The General Counsel and Chairwoman met with UC Berkeley representatives and discussed the next steps for the outreach project including several additional interviews to be conducted.
- c. Election Manual: The General Counsel indicated her staff will provide input by the end of next week.
- d. Annual Report: The Executive Secretary distributed a memo outlining assignments and setting deadlines for the Fiscal Year 2011/12 Annual Report.

e. 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). There is nothing new to report on electronic filing. The new rulemaking calendar is due in January 2013.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB* SB 691, as amended, Lieu. Unemployment Insurance: use of information.

As amended on August 24, 2012, this bill would amend Unemployment Insurance Code section 1095 to authorize the Employment Development Department (EDD), to the extent permitted by federal statutes and regulations to provide the Agricultural Labor Relations Board (ALRB) with employee, wage, and employer information for use in the investigation or enforcement of the Agricultural Labor Relations Act (Labor Code section 1140, et seq.). The bill also includes other provisions unrelated to the ALRB and is tied to the concurrent enactment of AB 174 and SB 1258, which relate to information to be provided by EDD to various other state agencies. The bill would add the following language, at new subdivision (ac) of section 1095 of the Unemployment Insurance Code authorizing the Director of EDD:

To provide the Agricultural Labor Relations Board with employee, wage, and employer information, for use in the investigation or enforcement of the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act of 1975 (Part 3.5 (commencing with Section 1140) of Division 2 of the Labor Code). The information shall be provided to the extent permitted by federal statutes and regulations.

This language differs slightly, but not substantively, from the language formerly contained in AB 2676. The bill was read a third time and amended on August 24, 2012. On August 28, the bill was passed and ordered to the Senate. On August 30, the Senate concurred with the Assembly amendments and ordered the bill to engrossing and enrolling. The bill was enrolled and presented to the Governor on September 10, 2012. On September 30, 2012, the Governor signed the bill.

9. Personnel – The General Counsel hired attorney Irma Martinez to join the staff in the Salinas Regional Office. Ms. Martinez will be starting October 15th. She will be training in Sacramento October 15-17, 2012.

10. Roundtable

The 31st Annual Agribusiness Management Conference will be held on November 7, 2012, at the Radisson Hotel and Conference Center in Fresno, California.

The public meeting adjourned at 11:10 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.