

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 5, 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; and Analyst Massie
Others Present: Daniel Rounds, California Senate Office of Research; Ben Ebbink, Assembly Committee on Labor and Employment

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for November 28, 2012 were approved with minor changes 3-0.
2. **Public Comment:** None.
3. **Chair's Report:** The Labor Workforce Development Agency (LWDA) is developing small working groups to discuss the sharing of resources.
4. **General Counsel's Report:** The General Counsel reported on the status of hearings, unfair labor practice charges, complaints and compliance activities in the regions.
5. **Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

No new NA's have been filed.

NOTICE OF INTENT TO TAKE ACCESS (NA)

Filing Date	Filing Party	Employer
09/20/12	Teamsters Local 890	Foothill Packing, Inc.

On September 20, 2012, the Teamsters Local Union No. 890 filed a Notice of Intent to Take Access (NA) with the Salinas ALRB Regional Office as to Foothill Packing, Inc. Foothill Packing, Inc. has approximately one thousand workers. The company's primary crop is lettuce, and other crops include spinach and melons. The company harvests crops in numerous counties throughout the State including Monterey, Santa Cruz, San Benito, San Luis Obispo, Santa Barbara, Fresno, Kings and Imperial County. On October 2, 2012, the Salinas Acting Regional Director informed the parties that the Regional Office would be investigating whether the named employer, Foothill Packing, Inc., is an agricultural employer within the meaning of the Act. In the meantime, the UFW would be permitted access to the workers at the worksite while the investigation was in progress. The investigation has concluded and the Acting Regional Director issued a letter to the parties on November 19, 2012, dismissing the NA based on his finding that Foothill Packing, Inc. is a farm labor contractor (FLC) and not a statutory employer under the ALRA. Any request for review was due on December 3, 2012. As neither party sought review of this decision, the Acting Regional Director's decision is now final.

NOTICE OF INTENT TO ORGANIZE (NO)

Four (4) NOs have been filed in the current fiscal year. All have met the 10% showing of interest.

Filing Date	Filing Party	Employer	10% Met
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	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. 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 hearing was held from June 13, 2011 to September 7, 2011. The post-hearing briefs were filed January 23, 2011. On June 15, 2012, the ALJ issued his decision in this matter. The employer filed exceptions to the ALJ's decision on August 28, 2012. On November 9, 2012, the Respondent/Employer, UFW and General Counsel filed their answering brief. All briefing has been completed and the matter is pending before the Board for decision.

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. 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. On October 16, 2012, the Board issued its decision on election objections. The Board set 15 of the UFW's 17 objections for an investigative hearing, and set two objections for hearing conditioned on the outcome of the investigation of two unfair labor practice (ULP) charges currently pending before the General Counsel. The investigative hearing that began on November 15, 2012 is still in progress.

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

On November 13, 2012 the UFW filed its response to a proposed unit clarification to be filed by the employer. On November 14, 2012 the employer filed a petition for unit clarification and/or amendment of the bargaining unit. The Regional Director's investigation is ongoing. The region is pending receipt of information requested from the employer. Once the investigation is completed, the Regional Director will issue a report to the Board.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

COMPLAINTS WITHDRAWN

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS SCHEDULED

Ace Tomato Company, Inc., 93-CE-37-VI (makewhole case)

Prehearing January 9, 2013

Hearing February 6, 2013

HEARINGS TO BE SCHEDULED

Ace Tomato Company, Inc., 2012-CE-007-VIS (alleged refusal to provide information)

Bud Antle, Inc., 2012-CE-007-SAL (alleged refusal to provide information)

HEARINGS IN PROGRESS

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

The hearing began on November 15, 2012 and is still in progress.

CASES PENDING TRANSCRIPTS, POST-HEARING BRIEFS OR ALJ/IHE DECISION

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

Post-hearing briefs are due December 14, 2012

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

The post-hearing briefs are due December 21, 2012

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

The post-hearing briefs are due January 18, 2013.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

Exceptions filed October 15, 2012

Replies filed October 29, 2012

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

Exceptions filed August 28 and 29, 2012

Replies filed November 9, 2012

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

On October 16, 2012, the Acting Regional Director filed a Notice of 2012 revised makewhole specification with the Board. On November 5, 2012, the respondent filed its answer to the revised specification. The matter is pending before the Board for decision.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

BOARD DECISIONS:

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 was due October 4, 2012. Neither party filed a petition for review. The Board issued its decision on this matter on October 9, 2012. On November 8, 2012, the petitioner, San Joaquin Tomato Growers, Inc., filed a petition for writ of review and requested an immediate stay. On November 16, 2012, the ALRB filed its opposition to the request for stay. On November 28, 2012, the Board filed the certified record. The Petitioner's opening brief is due January 3, 2013.

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. On October 17, 2012, the parties will be responding to each other's discovery requests (list of witness/documents). Mediation sessions were held October 22 and 23, 2012. The parties submitted their final positions/briefs on November 30, 2012. The matter is pending the issuance of the mediator's report.

George Amaral Ranches, Inc., 2012-MMC-003

On November 20, 2012, the Board issued an order directing the United Farm Workers of America (UFW) and George Amaral Ranches, Inc. (Employer) to participate in the mandatory mediation and conciliation process set forth in Labor Code sections 1164-1164.13 and sections 20400-20408 of the Board's regulations. The UFW was first certified as the exclusive collective bargaining representative on July 24, 2012. The UFW filed its declaration requesting mandatory mediation and conciliation on November 9, 2012, and the Employer did not file an answer to the UFW's request. On December 3, 2013, Annie Song-Hill, Interim Chief of California State Mediation Services, informed the parties that Matthew Goldberg has been informed that he has been selected by the parties as the mediator in this matter. The next step will be for the parties and mediator to schedule mediation sessions and then begin meeting for a period of up to 30 days. If the parties cannot reach mutual agreement within 30 days, the mediator may either extend the mediation process for an additional 30 days, or within 21 days, file a report with the Board that resolves all issues between the parties and establishes the terms of a collective bargaining agreement.

COURT LITIGATION:

ALRB v. Ace Tomato Co., Inc., Case No. 39-2012-00287876-CU-PT-STK (San Joaquin County Superior Court)

On October 4, 2012, the General Counsel (GC) was granted leave by the Board to seek enforcement of two outstanding investigative subpoenas related to three unfair labor practice charges against Ace Tomato Co., Inc. On October 5, 2012, she filed an ex-parte Application for enforcement of the subpoenas in San Joaquin Superior Court in Stockton, CA. The Ex-Parte hearing was calendared for 8:15 a.m. on October 9, 2012 in front of Judge Linda Lofthus. Ace sought to have the matter transferred to Judge Barbara Kronlund, arguing that the present subpoena enforcement action was substantially related to a prior temporary restraining order application heard by Judge Kronlund. Both parties met initially with Judge Lofthus in chambers. However, after a break in which Judge Lofthus conferred with Judge Kronlund, the matter was transferred to Judge Kronlund. Judge Kronlund refused to hear the matter ex-parte and set a hearing on shortened time for October 24, 2012. After Ace represented to the Court that all matters were stayed based on the October 17, 2012 stay order issued by the 5th District Court of Appeal in Case No. F065589, Judge Kronlund removed the matter from calendar, without proper notice to the ALRB. On October 22, 2012, the General Counsel filed an Opposition to the Respondent's Notice of Stay of the Proceedings to Enforce the General Counsel's subpoenas. There has not yet been a response from the Court to the General Counsel's opposition.

Ace Tomato Company, Inc., F065589

On August 23, 2012 Ace Tomato Company sought court review of the Board's decision in 38 No. 6 by filing a petition for writ of review with the Fifth Appellate District Court of Appeals. In 38 ALRB No. 6, pursuant to the Mandatory

Mediation and Conciliation provisions of the Agricultural Labor Relations Act, the Board affirmed in full Mediator Matthew Goldberg's report fixing the terms of a collective bargaining agreement between Ace and the United Farm Workers of America(UFW), the certified representative. Ace also requested a stay of the Board's decision. The Board and UFW both filed a preliminary opposition to the appeal. At the court's invitation, the Board and the UFW filed letter briefs on the issue of venue, arguing that proper venue was in the 3rd District Court of Appeal. On October 10, 2012, Ace filed its opening brief on the merits of the petition, along with a motion to augment the record to include a sample agreement between Ace and one of its labor contractors. On October 17, 2012, the 5th District Court of Appeal issued two orders. One order denied the ALRB's and UFW's request to transfer the case to the 3rd District Court of Appeal, without prejudice to filing a request directly with the California Supreme Court. The other order granted Ace's request that the Board's decisions before the court on review be stayed pending further order or determination of the merits of Ace's petition for writ of review. On October 25, 2012, the UFW filed an opposition to Ace's motion to augment the record and the ALRB filed a response joining in the UFW's opposition. On October 30, 2012, the Board filed with the 5th DCA a petition for rehearing on proper venue. On November 14, 2012, the Board filed its response brief on the merits. The UFW response brief on the merits is due December 7, 2012. Ace's closing brief is due on January 16, 2013.

San Joaquin Tomato Growers, F066074

On November 8, 2012, San Joaquin Tomato Growers, Inc. (Petitioner), filed in the 5th District Court of Appeal a petition for writ of review and requested an immediate stay of the Board's decision. On November 16, 2012, the ALRB filed its opposition to the request for stay. On November 19, 2012, the court sent a letter to the Board advising that the certified record was due in 10 days. The record was filed on November 29, 2012. Also on November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. On November 20, 2012, the court issued a letter setting forth the briefing schedule for the parties: Petitioner's opening brief is due January 3, 2013; Respondent Board's response brief is due within 35 days from the filing of Petitioner's opening brief; the Petitioner's reply brief is due within 25 days of Respondent's response brief.

MISCELLANEOUS:

State Bar 2013 membership fee statements have been sent to attorney members. ALRB attorneys may submit their dues statement to accounting for payment.

6. Special Projects

- a. Information Technology Committee: Update on Data Network and Email Migration Projects – Steve Guida will be providing training in Microsoft Word, Access, case tracking and case time applications in Salinas and Visalia next week.

The Executive Secretary will be attending the Quarterly Chief Information Officers' Forum on December 13, 2012.

- b. Education/Outreach: Update on UC Berkeley Outreach Project—Concepts for describing what the ALRB does to protect concerted activity are being developed.
- c. Revision of the ALRB Election Manual—Work continues on the manual revision.
- d. Annual Report—The Executive Secretary issued a status report on this project on December 4, 2012.
- e. Master Calendar—Nothing new to report.

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 proposed 2013 rulemaking calendar due to the Office of Administrative Law by January 30, 2013, will be circulated for review in early January.

8. Legislation – Update, if any, on pending legislation affecting the ALRB--On December 3, 2012, Senator Darrell Steinberg introduced a bill (SB 25) that would amend the Mandatory Mediation and Conciliation (MMC) provisions of the Agricultural Labor Relations Act (ALRA) as follows:

- 1) For certifications prior to January 1, 2003, to allow a request for MMC90 days after a demand to bargain, eliminating all prerequisites (i.e., by repealing sec. 1164.11).
- 2) For the purposes of MMC, "agricultural employer" would be defined as including "any person, party, entity, or employer that purchased all or part of an employer business, where the selling employer had an obligation to bargain under this chapter."
- 3) To provide that a Board decision may be enforced in Superior Court even if a party files for appellate review of the decision and that the parties are required to implement the terms of the decision immediately regardless of whether appellate review is sought.
- 4) To make the standard for a stay of the Board's decision stronger by requiring the elements to be demonstrated by clear and convincing evidence," and to require the court to provide written findings and analysis if it grants a stay.

The next step is for the bill to be assigned to a committee for hearing. See bill: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0001-0050/sb_25_bill_20121203_introduced.html

9. Personnel – Various job announcements have been released and are posted on the ALRB website. Member Rivera-Hernandez will participate in the McGeorge School of Law job fair. Regional attorney Cristina Pena is transferring from the ALRB Visalia office to the Salinas office. Assistant General Counsel Ed Blanco will retire the end of December.

10. Roundtable

The next public meeting will be held in January 2013.

The public meeting adjourned at 10:58 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.