

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

January 23, 2013

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: Ben Ebbink, Chief Consultant, Assembly Committee on Labor and Employment

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for January 9, 2013 were approved with no changes 3-0.
2. **Public Comment:** None.
3. **Chair's Report:** Governor Brown released the 2013-14 Budget. Tomorrow the Governor will give his State of the State address. The Labor and Workforce Development Agency (LWDA) ad hoc committee regarding labor court ideas is reviewing ways to share resources with smaller agencies. The ALRB General Counsel, Chair and Executive Secretary are participating on the committee. Mr. Ebbink expressed concern regarding the knowledge base of shared administrative law judges.
4. **General Counsel's Report:** The General Counsel reported on the status of hearings, unfair labor practice charges, complaints, settlements and compliance activities in the regions
5. **Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA)

Nothing new.

NOTICE OF INTENT TO ORGANIZE (NO)

Five (5) NOs have been filed in the current fiscal year. All have met the 10% showing of interest.

Filing Date	Filing Party	Employer	10% Met
07/09/12	UFW	Gargiulo, Inc.	Yes
08/04/12	UFW	Corralitos Farms, LLC	Yes
09/05/12	UFW	Corralitos Farms, LLC	Yes
09/10/12	UFW	T.T. 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 United Farm Workers (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 Administrative Law Judge (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 United Farm Workers (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 closed on December 11, 2012. The post-hearing briefs are due February 4, 2013. The General Counsel's request to file a brief in excess of 50 pages but to exceed 75 pages was granted by the ALJ.

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

On November 13, 2012, the United Farm Workers (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. On December 28, 2012 the Regional Director issued his report on unit clarification. As neither party filed exceptions to the report, the report will be made final and a revised certification of representative will be issued.

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 held January 9, 2013.

2nd Prehearing January 18, 2013.

3rd Prehearing January 24, 2013.

Hearing February 6, 2013.

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

Prehearing January 24, 2013.

Hearing February 20, 2013.

HEARINGS TO BE SCHEDULED

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

General Counsel is proposing February 26 and 27, 2013 hearing dates.

HEARINGS IN PROGRESS

None.

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

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

The matter is pending the ALJ's decision.

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

The parties have filed their post-hearing briefs and the matter is pending the ALJ's decision.

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

The post-hearing briefs are due February 4, 2013.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

Exceptions due January 31, 2013.

Replies due February 14, 2013.

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.

Bud Antle, Inc., 2012-CE-007-SAL

On January 9, 2013, the General Counsel filed a request for special permission to appeal the ALJ's order denying its motion for default judgment. Any response to that request was due January 18, 2013. As no party has filed a response to the General Counsel's request, this matter is now before the Board for decision.

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

On January 15, 2013, the General Counsel filed a notice of second revised makewhole specification. An answer to the specification is due by February 4, 2013.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Arnaudo Brothers, Inc., 2012-CE-030-VIS

On December 28, 2013, the General Counsel filed a request for leave to seek court order requiring compliance with investigative subpoena. On January 8, 2013 the Respondent filed its opposition to the request. On January 10, 2013, the Board granted the General Counsel's request.

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 February 1, 2013. The Board's response brief is due within 35 days of Respondent's response brief. The Petitioner's reply brief is due within 25 days of Board's response brief.

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 (Ace) sought court review of the Board's decision in 38 ALRB 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 filed its response on December 7, 2012. Ace filed its reply brief on January 16, 2013. All briefing has been completed and the matter is pending oral argument or decision.

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 issued an order denying an immediate stay of the Board's decision. The Board filed the certified record on November 29, 2012. Also on November 19, 2012, the court issued an order denying an immediate stay of the Board's decision. The Petitioner's opening brief is due February 1, 2013. The Board's response brief is due within 35 days of Respondent's response brief. The Petitioner's reply brief is due within 25 days of Board's response brief.

MISCELLANEOUS:

Gurinder S. Sandhu dba Sandhu Brothers Poultry & Farming, 2012-CE-010-VIS

On January 14, 2013, the Respondent filed a petition to revoke investigative subpoena with the Executive Secretary. On January 16, 2013, the ALJ directed the Respondent to file and serve a copy of the underlying subpoena and accompanying declaration by January 22, 2013. The Respondent filed the subpoena and declaration on January 16, 2013. The General Counsel has requested an extension of time to file its response to the petition to revoke until February 11, 2013. That request is pending before the Executive Secretary for ruling.

The ALRB website has been updated to reflect Senate Bill 126 with respect to Mandatory Mediation and Conciliation changes.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – The contract was updated to reflect the final due date as March 1, 2013. Updates will be made to both English and Spanish materials before forwarding to focus groups. The General Counsel spoke to a group at Lideres Campesinas in Ventura on January 13, 2013.

- b. Annual Report – The Executive Secretary provided a status report on the project. Responses to the annual message have been received. Submissions on Regional Office Activity, Outreach Activities and Board Ordered Remedies are pending.
- c. Master Calendar - The Executive Secretary provided a status report on the calendar of upcoming projects

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 Board voted 3-0 to approve the proposed ALRB 2013 Rulemaking Calendar for submittal to the Office of Administrative Law.

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 MMC 90 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 bill was referred to the Committee on Labor and Industrial Relations on January 10, 2013. See bill: http://www.leginfo.ca.gov/pub/13-14/bill/sen/sb_0001-0050/sb_25_bill_20121203_introduced.html

9. Personnel – Nothing new to report.

10. Roundtable

The California Agricultural Leadership Foundation's Agricultural & Government Leaders Reception will be held January 30, 2013, from 5:30 – 7:30 p.m. at the Senator Hotel Lobby, 1121 L Street, Sacramento.

McGeorge School of Law will hold its 13th Annual Public Interest Job Fair on January 31, 2013, from 5:00 – 6:30 p.m. Member Rivera-Hernandez will attend.

The 19th Annual AgSafe Conference will be held on February 26 - March 1, 2013 at the Hyatt Regency Monterey Hotel and Spa in Monterey. General Counsel Torres-Guillén will be presenting “The ABCs of the ALRB” on Wednesday, February 27th. Member Mason will also be in attendance.

The California Farm Bureau Federation's Legislative Reception will be held March 12, 2013, from 5:30-7:30 p.m. at Spataro Restaurant and Bar, 1415 L Street, Sacramento.

The California Grape and Tree Fruit League will hold its 77th Annual Meeting March 24-26, 2013, at The Montage Laguna Beach, 30801 South Coast Highway, Laguna Beach. General Counsel Torres-Guillén will be speaking at the event on March 25th.

The public meeting adjourned at 11:15 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.