

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 6, 2013

Time: 9:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Executive Secretary Barbosa (by telephone), ALJ Soble; Board Counsel Heyck, Robinson and Wender; and Analyst Massie

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:** The Board and General Counsel have been working with Labor Workforce and Development Agency and the Department of General Services regarding the move of the Agricultural Labor Relations Board Headquarters to another downtown Sacramento location by May 1, 2013. Negotiations are currently underway to acquire new office space. The Preliminary Budget Pre-Hearing before Senate Budget Subcommittee #2 is schedule for March 1, 2013. The hearing before Senate Budget Subcommittee #2 will be held on March 21, 2013.
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)

02/05/13 UFW Gila Farm Land LLC.

NOTICE OF INTENT TO ORGANIZE (NO)

Six (6) NOs have been filed in the current fiscal year. Five of the six have met the 10% showing of interest. One NO (Gila Farm Land LLC) is still under investigation.

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
02/05/13	UFW	Gila Farm Land LLC	Pending

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. On February 1, 2013, the parties submitted a joint stipulation extending the due date for the post-hearing briefs up to and including February 18, 2013 and the issuance of the ALJ's decision on the consolidated ULP and election objection case up to and including March 1, 2013. On February 4, 2013, the Executive Secretary approved the stipulation. The matter is pending the receipt of the post-hearing briefs.

Gila Farm Land LLC, 2013-RC-001-VIS

On February 5, 2013, the United Farm Workers filed a notice of intent to take access, notice of intent to organize and representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Gila Farm Land LLC. The employer is located in Blyth CA and its principal commodity is citrus (lemons). The UFW alleges that there are approximately 60 employees in the bargaining unit. An election, if appropriate, would be held on or about Tuesday, February 12, 2013.

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 was made final and a revised certification of representative issued on January 30, 2013.

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 held January 18, 2013.

3rd Prehearing held January 24, 2013.

On January 25, 2013 the General Counsel issued a revised makewhole specification adding multiple parties on a derivative liability theory.

4th Prehearing scheduled February 26, 2013.

Hearing March 18, 2013.

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

Prehearing held January 24, 2013.

2nd Prehearing scheduled February 11, 2013.

Hearing February 20, 2013.

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

Prehearing February 7, 2013

Hearing February 26, 2013

HEARINGS TO BE SCHEDULED

None.

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 matter is pending the ALJ's decision.

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

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

The ALJ decision is due March 1, 2013.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

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

Exceptions due February 11, 2013.

Replies due February 25, 2013.

CASES PENDING BOARD DECISION OR ACTION:

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 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.

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

On January 31, 2013, the General Counsel filed an application for special permission to appeal order of the ALJ regarding petition to revoke Respondent's notice in lieu of subpoena. The parties' response to the application is due February 6, 2013.

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

On February 1, 2013, the General Counsel filed a request for leave to seek court order requiring compliance with subpoena duces tecum. On February 1, 2013, the Board issued an order setting the Respondents' due date for filing a response to the request. The responses are due February 8, 2013.

Arnaudo Brothers, Inc., 2013-MMC-001

On February 4, 2013, the UFW filed a declaration requesting that the Board issue an order directing the United Farm Workers of America (UFW) and Arnaudo Brothers, Inc. to mandatory mediation and conciliation. The employer's response is due within three (3) days service of the declaration.

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.

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

On January 9, 2013, the General Counsel filed a request for special permission to appeal the Administrative Law Judge's (ALJ) order denying its motion for default judgment. The respondent did not file a response to that request. On January 25, 2013, the Board granted the General Counsel's request for special permission to appeal the ALJ's order and affirmed the ALJ's order denying motion for default judgment.

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

On January 25, 2013, the Board issued its decision affirming the ALJ's decision and dismissing the complaint in its entirety.

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 was filed February 1, 2013. The Board's and the UFW's response briefs are due March 8, 2013. The Petitioner's reply brief will be due within 25 days thereafter.

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 mediation sessions will begin on February 6, 2013, and will continue up to a period of 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. On February 1, 2013, the petitioner filed its opening brief. The Board brief is due within 35 days (March 8, 2013). The Petitioner's reply brief is due within 25 days of Board's response brief.

MISCELLANEOUS:

The ALRB Business Services Policy and Procedures Manual will be sent to DGS today.

6. Special Projects

- a. Education/Outreach: Update on UC Berkeley Outreach Project – On January 25, 2013, Marilu Garcia conducted outreach at the Winter Health Fair at the Mexican Consulate in Calexico, California. The English and Spanish fliers developed by the UC Berkeley Outreach group were reviewed. The materials will be presented to a focus group on Friday, February 8, 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. Election Manual – Responses have not yet been received.
- d. 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 ALRB 2013 Rulemaking Calendar was submitted to the Office of Administrative Law on January 30, 2013.

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 – *Progress on filling the following ALRB positions: Staff Services Manager I (Chief of Administration) – Sacramento; Attorney III/IV - Office of the General Counsel – Sacramento; Senior Board Counsel/Attorney IV - Office of the Board – Sacramento; Accounting Officer (Specialist) – Sacramento; Associate Personnel Analyst – Sacramento; Associate Information Systems Analyst – Sacramento; Senior Legal Typist - Office of the Board – Sacramento.* Interviews are taking place this week and next for the various positions. Labor and Workforce Development Agency is providing assistance with human resources and accounting matters in light of the departure of Accounting Officer Hau Cam and the impending retirement of Personnel Manager Dorothy Kojima.

10. Roundtable

Bear Flag Republic's "Welcome to Sacramento 2013 Reception" honoring newly-elected members of the Legislature and Brown Administration officials will be held on February 13, 2013, from 5:30 p.m. to 7:30 at The Sutter Club Library, 1220 Ninth Street, Sacramento.

SEIU Local 1000's Annual Legislative Reception will be held on February 13, 2013, from 5:30 p.m. to 7:30 p.m. in the Basement Rotunda of the State Capitol.

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