

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**July 7, 2010**

Time: 10:00 a.m.  
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero  
General Counsel: General Counsel Michael Lee  
Staff Present: Administrative Law Judge Soble, Board Counsels Heyck, Wender and Robinson  
Others: Accounting Officer Davis, Regional Directors Capuyan and Alderete, Assistant General Counsel Blanco  
Public: Rodney Wilson, Consultant to Assembly Member Gatto, and Julie Morales, Assembly Speaker Perez' office.

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for June 23, 2010, were approved 3-0.
- 2. Public Comments:** Ms. Morales asked whether there were laws in other states analogous to the ALRA. Board Members and Counsel explained that while other states had some protections for farmworkers, the ALRA was the most comprehensive law of its kind covering farmworkers.
- 3. Chairman Report:** Accounting Officer Davis circulated the ALRB's end-of-year budget for the 2009/10 fiscal year. Ms. Davis explained that the cost of almost all budget items was as projected at the beginning of the fiscal year.
- 4. General Counsel Report:** General Counsel Lee reported that six (6) new charges had been filed in the Regional Offices since the last Board meeting. The General Counsel and the Regional Directors are working to develop permanent Compliance Units at the Regional Offices to oversee compliance with final Board orders. The General Counsel briefly discussed the future of the El Centro sub-regional office and the challenges of finding office space for the remaining El Centro staff person. The Board discussed the possibility of seeking public input regarding the future of the office.

**5. Executive Officer Report:**

**ELECTION REPORT:**

**NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):**

None.

**PENDING ELECTION MATTERS:**

**Lassen Dairy dba Meritage Dairy, 07-RC-4-VI**

On September 4, 2007 UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Lassen Dairy dba Meritage Dairy. The employer is a dairy located in Bakersfield with approximately 25 employees. An election was held on September 11, 2007 with the following results:

UFCW	17
No Union	15
Unresolved Challenged Ballots	<u>6</u>
Total	38

As the unresolved challenged ballots were outcome determinative, the Regional Director investigated the challenges and issued his report on challenged ballots on November 9, 2007. The Employer filed exceptions to that report on November 19, 2007. The Board issued its decision on challenged ballots on February 15, 2008. A hearing on the three (3) challenged ballots was held on March 18, 2008. On April 22, 2008 the Investigative Hearing Examiner (IHE) issued his decision in this matter. No exceptions were filed and the Executive Secretary issued his order making the IHE decision final on May 12, 2008. On May 13, 2008 the Regional Director opened and counted the three challenged ballots and issued an amended tally with the following results:

UFCW	17
No Union	18
Unresolved Challenged Ballots	<u>2</u>
Total	37

Since the two remaining challenged ballots are outcome determinative and are dependent on the processing of ULP charges involving the two affected workers, the Executive Secretary has requested that the investigation of charges pertaining to Juan Alberto Tostado and Jose Antonio Tostado be expedited. On October 28, 2008 the Visalia Regional Director issued a complaint in this matter. A hearing on the related ULP's was held March 24 and 25, 2009. Post-hearing briefs were received May 8,

2009. On June 1, 2009 the ALJ issued his decision in this matter. Both the employer and charging party filed exceptions to the ALJ decision on June 24, 2009. Reply to exceptions briefs were filed July 7, 2009. On October 28, 2009 the Board issued its decision on the companion ULP matter. On November 30, 2009 the employer filed a petition for writ of review with the 5<sup>th</sup> DCA. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent ALRB's brief was filed February 16, 2010. Petitioner's reply brief was filed March 8, 2010. On May 26, 2010 the 5th DCA summarily denied the petition for review filed by Lassen. The employer did not seek review of this ruling and the ulp matter is now fully resolved.

On June 22, 2010 the Regional Director issued a final tally of ballots.

UFCW	17
No Union	18
Unresolved Challenged Ballots	1
Total	36

The matter now returns to the Executive Secretary to process the election objections filed by the Employer.

**Kawahara Nursery, Inc., 2010-RC-001-SAL**

On January 12, 2010 the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of Kawahara Nursery, Inc. The employer is a nursery located in Morgan Hill, San Lorenzo and Gilroy with 173 employees. An election was held on January 19, 2010 with the following results:

UFW	70
No Union	68
Unresolved Challenged Ballots	28
Total	166

The unresolved challenged ballots are outcome determinative and were investigated by the Salinas Regional Office. The UFW filed objections to the election on January 26, 2010. On March 29, 2010, the Regional Director issued his report on challenged ballots. The Employer filed exceptions to the Regional Director's report on April 9, 2010. On June 10, 2010 the Board issued its Decision and Order on challenged ballots setting various matters for hearing. Also on June 10, 2010 the Executive Secretary scheduled an investigative hearing for July 26, 2010. The UFW has requested a prehearing conference that is pending.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

None.

### **PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

#### **San Joaquin Tomato Growers, 93-CE-38-VIS**

Hearing: July 20, 2010

#### **Ace Tomato Company, Inc., 93-CE-37-VI**

Hearing: July 20, 2010

#### **Kawahara Nursery, Inc., 2010-RC-001-SAL**

Hearing: July 26, 2010

#### **Deardorff Family Farms, 2009-CE-057-VIS**

Prehearing Conference: July 20, 2010

Hearing: August 3, 2010

### **HEARINGS HELD:**

None.

### **CASES PENDING ALJ/IHE DECISION:**

#### **Temple Creek Dairy, Inc., 2009-CE-048-VIS**

Transcripts have been received and the post-hearing briefs are due July 16, 2010

### **ALJ/IHE DECISIONS ISSUED:**

None.

### **CASES PENDING EXCEPTIONS OR REPLY:**

None.

### **CASES PENDING BOARD DECISION OR ACTION:**

#### **San Joaquin Tomato Growers, 93-CE-38-VIS**

UFW's request to dismiss Regional Director's motion to close case without full compliance. Replies due July 9, 2010.

### **CASES SETTLED OR RESOLVED:**

### **COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

None.

**REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:**

None.

**COURT LITIGATION**

None.

**Miscellaneous**

Annual Report – The Executive Secretary circulated a memo of staff assignments to complete the annual report on July 1, 2010. Requested information is due by July 22, 2010.

The ALRB’s annual recycling report was sent to the California Integrated Waste Management Board on July 1, 2010.

**6. Special Projects**

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures—At the committee’s last meeting the complaint form template was discussed and will be presented to the Regional Directors at the July 8, 2010 Regional Directors’ Quarterly meeting. The case tracking system will be updated to track the Board’s administrative orders.
- b. Policy Committee Report— Drafts of the updated sick leave and bereavement leave polices were circulated last week.
- c. Delegation of Authority between Board and General Counsel—The Board discussed suggested edits to the draft updated delegation of authority agreement between the Board and the General Counsel. The Board voted 3-0 to approve the delegation of authority agreement with minor edits.
- d. Compliance—Regional Directors Alderete and Capuyan participated via teleconference and presented the Board with a general overview of the compliance process. According to the Regional Directors, the 1992 Case Handling Manual for Compliance is still a helpful guide to processing a case that has been released for compliance. As mentioned in the General Counsel’s report, the Regional

Directors have been developing draft timelines for accomplishing each step in the compliance process along with guidelines for monitoring and tracking compliance with Board orders. The Regional Directors also discussed how staff shortages have impacted the agency's ability to meet timelines in the past. Mr. Alderete and Mr. Capuyan pointed out that because the number of discriminatees can vary widely from case to case, estimated timelines for completing the different phases of the compliance process can also vary.

**7. Legislation** – Update, if any, on pending legislation affecting the ALRB.

**SB 1474, as introduced, Steinberg. Labor representatives: elections.**

This is a card check bill that is identical to SB 789, which was vetoed by the Governor in 2009.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board and the courts. Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

The bill was introduced, read for the first time, and sent to the Committee on Rules for assignment on February 19. On March 11, 2010, the bill was sent to the Committee on Labor and Industrial Relations. The bill was heard on April 13,

2010. On April 19, 2010 the bill passed out of committee and was re-referred to the Committee on Appropriations. On June 2, 2010, the bill was read a 3<sup>rd</sup> time and passed 7-3. To Assembly. On June 10, 2010, the bill was referred to the Committee on Labor and Employment. On June 24, 2010, the bill passed out of committee and was re-referred to the Committee on Appropriations.

**SB 835, as introduced, Strickland. Government reorganization:**

**realignment or closure.** This bill would enact the Bureaucracy Realignment and Closure Act of 2011. It would establish the Bureaucracy Realignment and Closure Commission in state government with a specified membership. Beginning on January 1, 2011, the Controller, the Director of Finance, the Legislative Analyst, the Legislative Counsel, the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, and the State Auditor would be required to develop recommendations for the closure or realignment of state bureaucracies for consideration by the commission. It would require the commission to independently evaluate the recommendations, conduct 3 public hearings, and, by January 1, 2012, have at least one member of the commission visit each state bureaucracy considered for realignment or closure. This bill would require the commission, not later than July 15, 2012, to submit a report of its final recommendations to the Governor and the Legislature that establishes a list of state bureaucracies that are proposed to be realigned or abolished. It would require the Governor, upon approval of the list of recommendations, to prepare the list as a reorganization plan and to submit the plan to the Legislature under the provisions relating to the Governor's reorganization plans.

This bill was introduced, read, sent to print and to the Rules Committee for assignment on January 4, 2010. On January 21, 2010, this bill was sent to the Committee on Governmental Organization. The bill was set for hearing on April 13, 2010 and failed passage in committee. The bill was set for hearing on April 22, 2010 (pending rules waiver). On April 19, 2010 Senate Rule 21.5(k)(2) was suspended allowing for reconsideration and vote.

***The following bills do not presently have any impact on the ALRB but are being tracked in the event of amendments that would extend their provisions to entities such as the ALRB:***

**AB 1659, as introduced, Huber. State government: agency repeals.**

This bill would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies, as defined, and to conduct a comprehensive analysis of every agency to determine if the agency is still necessary and cost effective. The bill would require each agency scheduled for repeal to submit a report to the committee containing specified information. The bill would require the committee to take public testimony and evaluate the agency prior to the date the agency is scheduled to be repealed, and

would require that an agency be eliminated unless the Legislature enacts a law, based upon a recommendation endorsed by a vote of the majority of the members of the committee, to extend, consolidate, or reorganize the agency. The bill would specify the composition of the committee, which would be appointed by the President pro Tempore of the Senate, the Speaker of the Assembly, and the Governor, and certain aspects of its operating procedure. The bill would also make a statement of legislative intent to enact legislation that provides for the repeal of every entity of state government, excluding an agency that is constitutionally created or an agency related to higher education. This bill is consistent with provisions of existing law governing the sunset review process for boards and bureaus under DCA. Because the bill does not establish new sunset dates for any state agencies, this bill is limited to the boards and bureaus under DCA already scheduled for sunset review pursuant to existing law. Accordingly, the bill as introduced does not include boards such as the ALRB. It will continue to be tracked in the event that an amendment broadens the scope of the bill. The April 7, 2010 amendments did not change the scope of the bill.

The bill was read for the first time and sent to print on January 19, 2010. On February 4, 2010, the bill was referred to the Committee on Business and Professions. On April 6, 2010, the bill was passed from committee, amended, and a vote was taken to not accept the amendments. On April 7, 2010, the bill was read a second time and amended.

**AB 2537, as introduced, Silva. State agencies: adjudications: presiding officers.**

Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law provides for the disqualification of a presiding officer for bias, prejudice, or interest in the proceeding. Existing law authorizes an agency that conducts an adjudicative proceeding to provide by regulation for peremptory challenge of the presiding officer. This bill would require that an agency that conducts an adjudicative proceeding provide by regulation for peremptory challenge of the presiding officer in cases where the presiding officer is an administrative law judge. The April 6 amendments added the following provision, which effectively exempts the ALRB from its provisions.

*(e) Subdivision (d) shall not apply to an agency that has five or fewer administrative law judges and has an existing system of internal appellate review for requests for disqualification of an administrative law judge in which the disqualification determination is made by the agency.*

The bill was introduced on February 19, 2010. The bill was read for the first time on February 22 and referred to the Committee on Business and Professions on

March 18. On April 6, 2010, the bill was set for the first hearing. The hearing was cancelled at the request of the author. On April 14, 2010, the bill was amended and re-referred to the Committee on Business, Professions and Consumer Protection, read a second time and amended

8. **Regulations-** None.
9. **Personnel-** None.
10. **Roundtable-**None.

The public meeting adjourned at 1:05 p.m.

**(no closed session)**