

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 20, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Michael Lee
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Wender, Heyck, and Robinson, and Analyst Massie
Others Present: Ben Ebbink, Chief Consultant, Assembly Committee on Labor and
Employment; Santos Quintero, UFW Representative; Farmworker
Representatives from Nurserymen's Exchange, Inc. and Kawahara
Nursery, Inc.

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for October 6, 2010, were approved 3-0.
2. **Public Comments:** Representatives from Nurserymen's Exchange and Kawahara Nurseries respectfully requested that their cases be processed as quickly as possible. Member Rivera-Hernandez apologized for delays caused by the ALRB's inability to hold hearings due to the lack of a budget and assured the workers that everything was being done to move their cases towards resolution as rapidly as possible.
3. **Acting Chair's Report:** Board Member Rivera-Hernandez and General Counsel Lee attended the Labor and Workforce Development Agency staff meeting. A major portion of the meeting was spent on discussions regarding the upcoming transition to a new administration.
4. **General Counsel Report:** Since the last meeting, two unfair labor practice charges have been filed.

It appears that the number of farm workers to be considered in the calculation of makewhole in the Ace Tomato and San Joaquin Tomato Growers cases is not as large as previously thought. Upon closer examination of the information provided by the Employment Development Department, it appears that approximately 1,400 employees involved. Mr. Lee will request an exemption from the hiring freeze to

permit the ALRB to fill two field examiner vacancies and to hire a retired annuitant on a temporary basis to assist staff with the preparation of the makewhole calculations. Mr. Lee explained the process of issuing a formal specification and the rights of the parties regarding their agreement or opposition to that specification.

Regional Director Alderete's memo re alternatives to closing the El Centro subregional office has been received. The Board expressed concern that the agency continue to maintain a viable presence in the southern part of the state. A proposal to maintain a presence without a full-time office will be prepared and sent to interested stakeholders for comment.

5. Executive Officer Report:

ELECTION REPORT

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

UFW filed an NA at Fernandez Brothers, Inc. on October 13, 2010.

UFW filed an NA at Ramco on October 14, 2010.

PENDING ELECTION MATTERS:

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	<u>28</u>
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. A pre-hearing conference was held on July 16, 2010. The hearing that was scheduled for July 26, 2010, was taken off calendar on July 23, 2010, for lack of a State budget. The

hearing will be re-calendared when a State budget is reached. On September 9, 2010, the Executive Secretary scheduled a prehearing conference in this matter for September 16, 2010. On September 21, 2010, the investigative hearing examiner issued his prehearing report. At the hearing both parties objected to the use of videoconference technology to conduct this hearing. Both agree that such technology is not feasible as the hearing may involve up to twenty percipient witnesses. The Executive Secretary has contacted the parties and requested dates to resume the hearing. Counsels have reviewed their schedules and the hearing will now be tentatively scheduled for the week of December 13, 2010.

South Lakes Dairy Farm, 2010-RC-002-VIS

On July 12, 2010, UFCW Union, Local 5, filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of South Lakes Dairy Farm. The employer is a dairy located in Pixley CA with approximately 40 employees. An election was held on July 19, 2010 with the following results:

UFCW	23
No Union	26
Unresolved Challenged Ballots	<u>9</u>
Total	58

As the number of unresolved challenged ballots is sufficient to affect the outcome of the election, the Regional Director will investigate the challenges and issue his report on the challenged ballots. Objections to the election were due July 26, 2010. Neither party filed objections to the election. The matter is pending the Regional Director's report on unresolved challenged ballots.

Nurserymen's Exchange, Inc., 2010-RC-003-SAL

On July 26, 2010, the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of Nurseryman's Exchange, Inc. The employer is a nursery located in Half Moon Bay with approximately 200 employees. An election was held on August 2, 2010, with the following results:

UFW	3
No Union	58
Unresolved Challenged Ballots	<u>107</u>
Total	168

As the number of unresolved challenged ballots is sufficient to affect the outcome of the election, the Regional Director will be investigating the challenges and issuing a report on challenged ballots. The Employer filed objections to the election on August 9, 2010. The Regional Director's report on challenged ballots issued on October 7, 2010. Exceptions to the report are due November 17, 2010.

Sun World, 2010-UC-1-VIS

The UFW filed a unit clarification petition involving Sun World and a number of other entities on September 14, 2010. The matter is pending investigation by the Regional Director.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

HEARINGS HELD:

None.

HEARINGS TAKEN OFF CALENDAR AND PENDING RE-SCHEDULING

Kawahara Nursery, Inc., 2010-RC-001-SAL - The Executive Secretary has contacted the parties and requested dates to resume the hearing. Counsel have reviewed their schedules and the hearing will now be scheduled for the week of December 13, 2010.

Deardorff Family Farms, 2009-CE-057-VIS - The Executive Secretary has contacted the parties and requested dates to resume the hearing. Counsel are reviewing their schedules and will be contacting the Executive Secretary with new dates.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

Nurserymen's Exchange, Inc., 2010-RC-003-SAL

Exceptions are due November 17, 2010

CASES PENDING BOARD DECISION OR ACTION:

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

The ALJ's decision issued August 5, 2010. General Counsel filed exceptions to the ALJ decision on August 30, 2010. Reply briefs were filed September 13, 2010. The matter is pending before the Board for decision.

CASES SETTLED OR RESOLVED:

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

An administrative order affirming the ALJ's decision issued October 11, 2010.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION: Nothing new to report.

MISCELLANEOUS: Nothing new to report.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy -- The committee meet on October 13, 2010. The complaint instructions are being formalized in a manual to assure data flows timely and accurately. Mr. Guida has circulated drafts of administrative law judge templates for review. A redundancy was discovered in the way charges are processed. The committee will meet next week to review the draft charge reporting process. Computer Sciences Corporation (CSC) was awarded the State of California enterprise email contract. First stage department migrations to the new CSC hosted email solution will begin in the spring of 2011.

- b. Policy Committee Report: Member Rivera-Hernandez has circulated the last group of policies. All approved policies can be found in shared files.
- c. Compliance: Proposal to amend Unemployment Insurance Code section 1095 – The Board voted 3-0 to propose that Unemployment Insurance Code section 1095 be amended to facilitate the use of EDD wage and employer information in effectuating compliance with Board decisions. Staff was asked to draft language for consideration at a future Board meeting.
- d. Master Calendar: The Executive Secretary reported progress on reports due.

7. Legislation – Nothing new to report.

8. Personnel – Nothing new.

9. Roundtable

Mary Jennings with the Rescue & Restore Victims of Human Trafficking Program of the Sacramento Employment & Training Agency (SETA) will be making a presentation via Tele-conference on Human Trafficking on November 10, 2010 at 10:30 a.m. She estimates that, including any Q&A, the presentation could last up to one-and-a-half hours.

NLRB Conference: Plans are also underway for a jointly sponsored labor law conference in Las Vegas, Nevada, on December 2, 2010. The first annual event is cosponsored by NLRB Regions 20, 21, 28, 31 and 32, the FMCS and multiple LERA chapters. Confirmed speakers included Board Chair Wilma Liebman and FMCS Director George Cohen.

The 29th Annual Agribusiness Management Conference will be held on November 9, 2010, at the Radisson Hotel and Conference Center in Fresno, California.

The public meeting adjourned at 12:02 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.