

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 23, 2011

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Migden
Staff Present: Executive Secretary Barbosa; Board Counsel Heyck, Robinson and Wender; Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for March 2, 2011, were approved 3-0.
2. **Public Comments:** None.
3. **Acting Chair's Report:** Nothing new to report.
4. **General Counsel Report:** General Counsel Lee is on vacation.
5. **Executive Officer Report:**

ELECTION REPORT

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

None.

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. 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 investigative hearing was held December 13-17, 2010. The employer and union filed their post-hearing briefs on March 7, 2011. The IHE is reviewing the briefs and preparing his decision.

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 Regional Director issued his report on challenged ballots on October 25, 2010. Exceptions to the report were filed November 4, 2010. . The Board issued its decision on challenged ballots on December 17, 2011. A second prehearing conference was held February 23, 2011. The parties requested and were granted a one-month continuance of the hearing to April 4-7, 2011. The parties indicated an interest in filing a motion or request with the

Board to open and count the two resolved challenged ballots as the revised tally may obviate the need to have an investigative hearing on the remaining challenges set for hearing. On March 21, 2011, we received a joint motion from South Lakes Dairy Farm and United Food & Commercial Workers requesting that ALRB approve the parties' stipulation to open and count two unresolved challenged, certify the election results and cancel the IHE hearing. The parties contend that the opening and counting of these two ballots will be sufficient to resolve all questions concerning the election. This matter is under review by the Board.

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 October 7, 2010. Exceptions to the report were received November 17, 2010. The Board issued its decision on challenged ballots on December 17, 2011. The employer filed a motion for reconsideration on December 27, 2010. The motion was denied on January 7, 2011. The resolved challenged ballots were opened and counted on January 12, 2011 and the Regional Director issued a final tally of ballots with the following results:

UFW	90
No Union	64
Unresolved Challenged Ballots	<u>13</u>
Total	167

On February 7, 2011, the Executive Secretary issued his order on Employer's election objections. On February 17, 2011, both the employer and the union filed a request for review of the Executive Secretary's decision setting and dismissing election objections. The Board issued its order denying the requests for review filed by the UFW and Employer on March 10, 2011 (Admin. Order No. 2011-02.) The hearing on election objections is now scheduled for May 19 and 20, 2011.

D'Arrigo Bros. of California, 2010-RD-003-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 the employer since October 27, 2010 and continuing, 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. Any request for review was due March 21, 2011. Neither party filed a request for review and the matter is now pending scheduling of an investigative hearing. 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.

California Florida Plant Company, 2011-RC-001-SAL

On February 4, 2011 the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of California Florida Plant Company. The employer is a nursery located in Salinas with approximately 41 employees. An election was held on February 11, 2011, in Salinas with the following results:

UFW	12
No Union	7
Unresolved Challenged Ballots	<u>5</u>
Total	24

As the number of unresolved challenged ballots is sufficient to affect the outcome of the election (a tie vote results in a union loss), the Regional Director will investigate the challenges and issue a report. On February 17, 2011, the employer filed objections to the election. The Regional Director has received the employer's position and is waiting for the union's position. The Regional Director's anticipates completing his investigation on challenged ballots by the end of the month.

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 employer requested and was granted an extension of time to file its response to the petition by November 12, 2010. The UFW was granted an extension through December 15, 2010 to respond to the region's request for information. The union's response was received on December 15, 2010.

The Regional Director has granted the Employer an extension February 1, 2011, to file a further response. The parties' positions have been received and are being evaluated.

COMPLAINT REPORT

COMPLAINTS ISSUED

Tony P. Cardoza Dairy, 2011-CE-005-VIS

On March 15, 2011, the Visalia Regional Director issued a complaint against Tony P. Cardoza Dairy for allegedly disciplining and discharging an employee because of his protected concerted activities.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

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

2nd Prehearing conference was held February 23, 2011
Hearing April 4-7, 2011

United Farm Workers, 2007-CL-05-SAL

Prehearing conference March 29, 2011
Hearing April 19, 2011

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

Hearing May 19 & 20, 2011

HEARINGS IN PROGRESS

None.

CASES PENDING ALJ/IHE DECISION:

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

Hearing held December 13-17, 2010
Post-hearing briefs filed March 7, 2011
Pending IHE Decision

Martin Hein Ranch Company, 2009-CE-021-VIS

Prehearing conference held January 18, 2011
Hearing closed February 11, 2011
Post-hearing briefs due March 21, 2011.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

Lu-Ette Farms, Inc., 80-CE-263-EC

On February 14, 2011, the Regional Director filed a motion to make case eligible for pay out from the Agricultural Employee Relief Fund. The request for review, if any, is due March 16, 2011.

Lassen Dairy, Inc., 07-CE-37-VI

On March 18, 2011, the Visalia Regional Director submitted his request for approval of a formal bilateral settlement agreement in Lassen Dairy, Inc., 07-CE-37-VI.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

The Board issued its order denying the requests for review filed by the UFW and Employer on March 10, 2011 (Admin. Order No. 2011-02.)

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

None.

MISCELLANEOUS:

6. Special Projects

- a. Information Technology Committee: There will be a small IT Committee meeting on March 24, 2011. A new set of templates is ready for review. Consultant Guida continues to work with Accounting Officer Davis on the accounting portion of the case tracking system.
- b. Policy Committee Report: Member Rivera-Hernandez will issue policy changes for review next week.

c. Master Calendar: The Executive Secretary reported progress on reports due.

7. Legislation

SB 104, as introduced, Steinberg. Labor representatives: elections.

SB 104 is a card check bill that differs only in a few respects from SB 1474, which was vetoed last year by Governor Schwarzenegger. SB 104 would amend the Agricultural Labor Relations Act (Lab. Code §§ 1140, et seq.) to (1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; (2) impose a civil penalty of up to \$20,000 for the commission of specified unfair labor practices; and (3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief. SB 104 differs from SB 1474 in several minor respects, two of which are most significant. One is the addition of a \$10,000 fine for an employer's failure to timely provide an employee list (name, address, classification, etc.) after the filing of a "majority sign-up election petition." The other is the deletion of the requirement that representation cards utilized for a majority sign-up election contain a statement that no promises or threats were made to obtain the employee's signature and the deletion of an acknowledgement that the employee is aware of the ALRB's toll free number, which may be used to complain of coercion or other unfair labor practices. On February 10, 2011, the bill was referred to Committee on Labor & Industrial Relations. On March 9, 2011, the bill passed out of committee and was re-referred to the Committee on Appropriations. The bill passed out of committee on March 17, was read a second time on March 21, and was ordered to a third reading on that date.

SB 153, as introduced, Strickland. State boards and commissions: salaries: suspension.

Existing law provides for the payment of specified salaries to the members of various state boards and commissions. A member of a state board or commission may receive a per diem salary at a specified rate, except for a member whose salary is set pursuant to certain provisions of law.

This bill would prohibit members appointed to specified state boards and commissions, *including the ALRB*, from receiving a salary for the 2012-13, 2013-14, and 2014-15 fiscal years. This bill would authorize a member of a state board or commission who is prohibited from receiving a salary under these provisions to receive a *per diem payment of \$100* during those fiscal years. This bill is essentially identical to previous bills that were introduced seven of the last eight years, none of which made it out of committee. On February 10, 2011, the bill was referred to the Committee on Governmental Organization. The bill is set for hearing on April 26, 2011.

AB 800, as introduced, Huber. Boards and commissions: time reporting.

Existing law establishes various boards and commissions within state government. Existing law sets forth various standards and procedures that govern the amount of salary or per diem expenses that a member of a board or commission may earn or claim.

This bill would require that a member of a board or commission that meets specified requirements submit a quarterly report to the chair of the board or commission that details the time worked by the member fulfilling the duties of his or her position. This bill would also require that the chair of the board or commission submit a quarterly report to specified committees of the Legislature that contains copies of all of the time reports received by the chair. This bill was referred to the Committee on Business, Professions and Consumer Protection on March 20, 2011.

8. Personnel – Nothing new.

9. Roundtable

The 22nd Annual CCS Labor Management Conference will be held on March 23-24, 2011, at the Disney's Paradise Pier Hotel, Anaheim, CA

Today is Ag Day 2011 at the State Capitol from 11:30 a.m. to 1:30 p.m.

The public meeting adjourned at 11:05 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.