

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 17, 2011

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden
General Counsel: Assistant General Counsel, Ed Blanco
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and Robinson

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for August 3, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** Chairwoman Shiroma reported that the Office of Native American Affairs (Office of the Attorney General) invited agencies to participate in the 44th Annual Native American Day on September 22, 2011. The event will be on the south steps of the State Capitol from 10 am to 2 pm. Ms. Shiroma also reported that she had been contacted by the Department of Finance regarding the process for putting together a Budget Change Proposal (BCP).
- 4. General Counsel Report:** Assistant General Counsel Ed Blanco reported that with respect to compliance matters, things are moving along in both regional offices. In the Salinas office, a number of Unfair Labor Practice (ULP) charges were dismissed. Mr. Blanco also gave a brief report on his meeting with the Riverside County Sheriff's Department and the local branch of the Department of Labor Standards Enforcement (DLSE) which are part of a task force targeting human trafficking problems.
- 5. Executive Officer Report:**

ELECTION REPORT

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

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's decision issued June 13, 2011. Both the UFW and the Employer filed exceptions to the decision on June 27, 2011. The reply to exceptions was filed July 7, 2011. The matter is pending decision before 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.) A pre-hearing conference was held May 16, 2011. On May 16, 2011, the Regional Director issued a dismissal of election petition. On May 17, 2011, the Investigative Hearing Examiner issued his prehearing conference order, order continuing the hearing, and order setting an additional prehearing conference to deal with remaining discovery issues. On May 17, 2011, the UFW filed its opposition to the Regional Director's decision to dismiss the petition. On May 18, 2011, the Board issued an order setting a response deadline of May 23, 2011. On May 24, 2011, a prehearing conference call was held regarding various Employer subpoenas seeking personal testimony from regional staff, followed by the issuance of an IHE order on that subject on May 25, 2011. On May 26, 2011, the Board issued a decision which held that the Regional Director had no authority at this late timeframe to issue a dismissal of election petition, but, in light of Employer's recent bankruptcy filing, continued the hearing to Tuesday, June 22, 2011. On June 1, 2011, the Employer filed its request for reconsideration of the Board's Decision overruling regional director's dismissal of election petition. On June 2, 2011, the Salinas Regional Director filed its motion for reconsideration and/or amendment and/or to strike language from the Board's decision & order. Both

motions were denied on June 7, 2011. Due to a scheduling conflict between both the assigned ALJ and one of the parties, the hearing previously scheduled for June 22, 2011, is canceled and has now been rescheduled for September 21 and 22, 2011.

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 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. 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 prehearing conference order issued on May 31, 2011. A hearing on the consolidated complaint and election objections commenced on June 13, 2011. The hearing resumed on July 11, 2011 and is still in progress.

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 issued his report on challenged ballots on May 9, 2011. On May 19, 2011, the employer filed exceptions to the report. On August 1, 2011 the Board issued its decision on challenged ballots. The Executive Secretary is in contact with parties over the scheduling of the hearing in this case.

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 granted the Employer an extension February 1, 2011, to file a further response. The region received the additional information and the UFW requested the opportunity to respond to the information received. Their response is due May 16, 2011. The matter is pending the Regional Director's report on unit clarification.

COMPLAINT REPORT**COMPLAINTS ISSUED**

None.

**PREHEARING, HEARING OR SETTLEMENT CONFERENCES
SCHEDULED:****Nurserymen's Exchange, Inc., 2010-RC-003-SAL**

September 21 & 22, 2011

Deardorff Family Farms, 2009-CE-057-VIS

Hearing to be scheduled

HEARINGS IN PROGRESS**D'Arrigo, 2010-RD-004-SAL**

Hearing resumed July 11, 2011 and is in progress in Salinas.

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

Hearing resumed August 15, 2011 and recessed on August 16, 2011 in Modesto. The hearing will resume on Friday August 19, 2011.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

United Farm Workers, 07-CL-05-SAL

Exceptions due July 21, 2011

Replies due August 26, 2011

CASES PENDING BOARD DECISION OR ACTION:

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

Exceptions received June 27, 2011

Reply filed July 7, 2011

CASES SETTLED OR RESOLVED:

None.

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:

Both the Salinas and Visalia Regional Offices have contacted radio stations in their region and requested airing of ALRB public service announcements. The radio stations have either confirmed such airing or such confirmation is pending.

The Executive Secretary asked the Board to consider when the next Regional Director's Quarterly meeting should be scheduled.

Nancy Davis has advised the Executive Secretary that the invoices for the Richard Schneider Interpreter Services contract will start to exceed the \$30,000 contract amount soon.

6. Special Projects

- a. Information Technology Committee: Chairwoman Shiroma reported that at the last meeting with Steve Guida on August 4, 2011, the committee discussed what work was needed to generate reports for the ALRB's Annual Report. The next meeting will be held on Friday September 2, 2011.
- b. Annual Report FY 2010/11: The deadline to submit portions of the Annual Report was August 12, 2011. Most sections have been completed, a few need to be reviewed and verified and some drafting remains. We will start putting the report together next week.
- c. FISMA report: Member Rivera-Hernandez will lead the discussion regarding preparation of a new Financial Integrity and State Managers Accountability (FISMA) report at the Regional Director's Meeting on September 14, 2011.
- d. Master Calendar

The Executive Secretary reported progress on reports due.

- 7. Legislation** – AB 1313- The Senate Appropriations Committee analysis issued on August 15, 2011, reflected the cost information provided by the ALRB in its fiscal analysis and recommended that the bill be put on the suspense file. On August 15, 2011, the bill was referred to the suspense file.
- 8. Personnel** – Effort to reclassify Board Counsel and Senior Board Counsel: A representative of the Department of Personnel Administration (DPA) will meet with the ALRB's committee on August 18, 2011.

9. Roundtable

Executive Secretary Barbosa will be making a presentation on farmworker rights under the ALRA at the Mexican Consulate's Office in Sacramento on August 29, 2011.

Ed Blanco will be meeting with the Mexican Consulate's office in Fresno to discuss the sharing of interpreters for indigenous languages. The meeting will also cover human trafficking issues in the Fresno region.

The public meeting adjourned at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.