

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**December 7, 2011**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden  
General Counsel: General Counsel Torres-Guillén  
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,  
Board Counsel Wender and Robinson, Analyst Massie  
Others Present: Fely Realin, Administrative Assistant, Wine Institute;  
Jen Breese, Legislative Analyst, Department of Conservation; and  
Ben Ebbink, Chief Consultant, Assembly Committee on Labor and  
Employment

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for November 22, 2011, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** Budget—Accounting Officer Davis is preparing materials for Governor's budget. Work is currently underway to develop an interagency agreement with Labor and Workforce Development Agency (LWDA) to provide for retired annuitants, attorneys, and information technology needs. LWDA has revised its reporting schedule to every two weeks to coincide with the bi-weekly reports due to the Governor's office. The Department of Industrial Relations is instituting a task force looking into the underground economy. General Counsel Torres-Guillén and Member Rivera-Hernandez will represent the Agricultural Labor Relations Board (ALRB). The ALRB will commence a more focused and larger outreach program in 2012. General Counsel Torres-Guillén and Member Shiroma are meeting on December 14<sup>th</sup> with the Department of Industrial Relations (DIR) and the UC Berkeley consultant who developed the heat stress outreach program for DIR.
4. **General Counsel Report:** General Counsel Torres-Guillén attended the annual Farm Workers Appreciation Breakfast in Calexico on December 2nd. Between two and

three new attorneys will be hired for the regional offices once they pass the Spanish-language exam. Field examiner interviews will be completed this week. A field examiner will be hired for each office when the Spanish-language exams are completed. An interagency agreement with the Employment Development Department to assist on cases has been approved. The General Counsel is continuing to look at cases to assure responses are timely.

## **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. On November 22, 2011, the Board issued its decision on challenged ballots (37 ALRB No. 4). Any request for reconsideration is due December 5, 2011.

**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 (IHE) 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. The investigative hearing was held September 21 and 22, 2011. The post-hearing briefs were received November 21, 2011. The matter is pending the issuance of the IHE's decision.

#### **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 closed on September 7, 2011. The post-hearing briefs are due January 19, 2011.

#### **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. On August 18, 2011 the ALRB was informed that the Company permanently closed its facility a few months ago. The investigative hearing opened on September 28, 2011 and closed prematurely due to the unavailability of a witness. The hearing resumed and closed on November 2, 2011. The post-hearing briefs are due December 22, 2011.

**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. On October 12, 2011 the Regional Director requested that the union’s unit clarification petition or amendment of certification be set for hearing. On October 13, 2011 the Executive Secretary granted that request and set the matter for hearing for October 26, 2011. The hearing opened and closed on October 26, 2011. The post-hearing briefs are due January 20, 2012.

**COMPLAINT REPORT**

**COMPLAINTS ISSUED**

No new complaints have issued.

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

**UFW (Cortez), 2008-CL-005-VIS**

Prehearing Conference: December 6, 2011

Hearing: December 13, 14 and 15, 2011

Whether the collective bargaining representative UFW breached its duty of fair representation by allegedly failing to properly represent unit employee Florentina

Cortez concerning an incident involving a fight between two unit employees both represented by the same union UFW. Matter was taken off calendar on December 5, 2011, in order to allow General Counsel to pursue settlement discussions.

**HEARINGS IN PROGRESS**

None.

**HEARINGS SCHEDULED**

None.

**CASES PENDING ALJ/IHE DECISION**

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

The post-hearing briefs received November 17, 2011.

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

The post-hearing briefs due December 21, 2011.

**Sun World, 2010-UC-1-VIS**

The post-hearing briefs due January 20, 2012.

**D'Arrigo, 2010-RD-004-SAL**

The post-hearing briefs are due January 19, 2011.

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

The post-hearing briefs due December 22, 2011.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASES PENDING EXCEPTIONS OR REPLY:**

None.

**CASES PENDING BOARD DECISION OR ACTION:**

None.

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

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

Board decision issued November 22, 2011

Request for motion for reconsideration due December 5, 2011

**Sun World International, Inc., 01-CE-613-EC(R)**

Board issued order granting motion to make cases eligible for payout from Agricultural Employee Relief Fund and order granting motion to close cases issued (Admin. Order No. 2011-21) on November 17, 2011.

**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 is due December 14, 2011. The employer's reply is due December 21, 2011.

**COURT LITIGATION:**

None.

**MISCELLANEOUS:**

None.

**6. Special Projects**

- a. Information Technology Committee: There have been a number of meetings with Steve Guida since the last Board meeting, towards bringing the case tracking system up to the level of what courts track. Mr. Guida introduced the idea of taking the system from Access to a web-based system. There will be a meeting to review alternatives and costs. Analyst Massie continues working with the CES Migration Team on the statewide email consolidation project.
- b. Annual Report FY 2010/11: The ALRB's annual report for fiscal year 2010/2011 is now finalized and will issue on December 9, 2011.
- c. Financial Integrity and State Managers Accountability Act (FISMA) Report: Member Rivera-Hernandez circulated a draft of the report. The Department of Finance has issued revised template. Edits to the draft are due by December 13th.
- d. Master Calendar: The Executive Secretary reported on the progress on reports due.

7. **Regulations Implementing Senate Bill No. 126** –No public comment has been received. The request for hearing deadline is December 13<sup>th</sup>. The deadline for comments is December 28, 2011. Ben Ebbink of the Assembly Labor Committee requested any comments received be posted on the ALRB website. If there are no changes to the proposed regulations, the earliest the Board could adopt the regulations would be January 4, 2012. If adopted on that date, the deadline for Office of Administrative Law approval would be February 17, 2012. The regulations would then go into effect 30 days later unless an earlier date is requested. However, even without an approved regulation, the Board has authority to implement the Act.
8. **Legislation** – *Update, if any, on pending legislation affecting the ALRB*—Nothing to report.
9. **Personnel** – Interviews will be scheduled the week of December 12<sup>th</sup> for the retired annuitant clerical position for the Board. Member Rivera-Hernandez will participate in interviews on behalf of the Board. The Executive Secretary will prepare a duty statement for legal interns.
10. **Roundtable** –

The Executive Secretary will attend the Quarterly Chief Information Officer (CIO) meeting on December 12, 2011.

The ALRB Holiday Party will be held Tuesday, December 13<sup>th</sup>, at the River City Brewing Company, 545 Downtown Plaza, Suite 1115, Sacramento.

ALRB staff has been invited to the State Treasurer's Holiday Party in the 1<sup>st</sup> Floor Foyer, at 915 Capitol Mall, on Wednesday, December 14<sup>th</sup>, from 2-4 p.m.

The public meeting adjourned at 11:15 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**