

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

January 18, 2012

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Acting Executive Secretary Soble, Board Counsel Wender, Heyck and Robinson; Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for January 11 will be approved at the next week.
2. **Public Comments:** None.
3. **Chair's Report:** The Chairwoman and General Counsel are working with the Labor and Workforce Development Agency on an Interagency Agreement to fund needed personnel and outreach activities during the current fiscal year. Operations expenditures midyear are tracking as planned. Board Member Rivera-Hernandez is the Board's representative on the newly formed Labor Enforcement Task Force (LETF) headed up by the Department of Industrial Relations.
4. **General Counsel Report:** General Counsel Torres-Guillén is working with a consultant who has converted employee records to an electronic file for greater ease in calculating backpay/makewhole for an ongoing case.
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'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). The UFW filed a request for reconsideration on December 5, 2011. The employer filed its response to the motion on December 13, 2011. On December 21, 2011 the Board issued its order denying the motion for reconsideration. The opening and counting of the resolved challenged ballots was held on January 13, 2012. Pursuant to the Board's decision in *Kawahara Nurseries, Inc.* (2011) 37 ALRB No. 4, the Salinas Regional Office prepared two tallies, one excluding the ballots of the merchandisers and a second one including them. The separate tallies were necessary in order to preserve the vote count should the Executive Secretary issue a ruling on an objection to the Regional Director's designation of a statewide bargaining unit as opposed to separate bargaining units for the farm and merchandiser employees.

With respect to the tally of farm employees without the merchandiser employees, the tally was as follows:

UFW	71
No Union	71
Unresolved Challenged Ballots	23

With respect to the tally of farm employees with the merchandiser employees, the tally was as follows:

UFW	74
No Union	91
Unresolved Challenged Ballots	0

In neither case did the UFW receive a majority vote. The matter is now before the Executive Secretary's office for screening of the Union's election objections.

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. The investigative hearing was held September 21 and 22, 2011. The post-hearing briefs were received November 21, 2011. The IHE issued his decision on election objections on December 19, 2011. Exceptions were due January 3, 2012 and reply briefs January 13, 2012. On December 20, 2011 the UFW requested a four-week extension of time to January 31, 2012 to file exceptions to the IHE's decision. The Executive Secretary granted the union's request. Exceptions to the IHE's decision are due January 31, 2012. Reply briefs are due February 10, 2012.

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 were filed on January 12, 2012, and the matter is pending the Investigative Hearing Examiner's decision.

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 were due January 20, 2012. On December 19, 2011 the UFW requested a three-week extension of time to file its post-hearings brief. The Executive Secretary granted the union's request and the post-hearing briefs are due on February 10, 2012

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

San Joaquin Tomato Growers, Inc., 2011-MMC-001

February 8, 2012

CASES PENDING ALJ/IHE DECISION

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

The post-hearing briefs were received January 12, 2012. The matter is pending the IHE's decision

D'Arrigo, 2010-RD-004-SAL

The post-hearing briefs are due January 19, 2011

Sun World, 2010-UC-1-VIS

The post-hearing briefs are due February 10, 2012

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

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

Exceptions are due January 31, 2012

Reply briefs are due February 10, 2012

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

Exceptions are due February 2, 2012

Reply briefs are due February 16, 2012

CASES PENDING BOARD DECISION OR ACTION:

George Arakelian Farms, Inc., 78-CE-11-E

The General Counsel's Motion to Make Cases Eligible for Payout from AERF and Motion to Close Cases was re-served on the parties on January 6, 2012. Responses to the motion are due January 20, 2012.

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:

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 was filed December 13, 2011. The employer's reply was filed December 21, 2011. On December 23, 2011 the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011, the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012 in Modesto. On January 18, 2012 the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. That order is issuing today.

COURT LITIGATION:

None.

MISCELLANEOUS:

Nothing to report.

6. Special Projects

- a. Information Technology Committee: Costs involved in acquiring a CGEN circuit for the new statewide email system were reviewed.
- b. Education/Outreach: General Counsel Torres-Guillén and Chairwoman Shiroma met with consultants from Labor Occupational Health Program (LOHP) of UC Berkeley who provided a summary of how to provide an education outreach program for the ALRB. New outreach materials could be used, for example, by the Labor Enforcement Task Force (LETF).
- c. Master Calendar

The Acting Executive Secretary reported on the progress on reports due.

7. **Regulations Implementing Senate Bill No. 126** – On December 12, 2011, the United Farm Workers of America filed its request for request for a public hearing concerning the proposed regulatory amendments to Title 8, sections 20363, 20365, 20393, 20400, and 20402. On December 22, 2012, the UFW filed its public comment to the Board’s proposed 2011 regulatory package. No other comment was received by the December 28, 2011 deadline. Public Hearing will be held on Friday, January 20, 2012. It was thought that a grower representative had sent material regarding the public hearing that was not received by the ALRB. Upon further investigation, the representative informed the ALRB that nothing was sent to the ALRB regarding implementing Senate Bill No. 126. A staff memo will be circulated and provided at the public hearing on Friday, January 20th.

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

AB 276, as introduced (Ajelo). Local government: financial reports (Ajelo).

This bill was amended on August 18, 2011, to modify the mandatory mediation and conciliation (MMC) portions of the ALRA, and would repeal the provision specifying the conditions necessary for making a renewed demand to bargain and would instead provide that a request for MMC could be filed with the Board 180 days after any request to bargain. On January 4, 2012, the bill re-referred to the Committee on Labor & Industrial Relations.

9. **Personnel** – The Accounting Officer Job announcement was sent out. General Counsel hired a retired annuitant to assist in cleanup and organization.

10. Roundtable –

General Counsel Torres-Guillén will be honored as recipient of the Benito Juarez attorney of the year award at Mexican American Bar Association of Los Angeles on Saturday, February 4, 2012.

The General Counsel and Board Member Rivera-Hernandez will be speaking at the Agricultural Personnel Management Association (APMA) Forum to be held at Shell Beach, California, on February 2, 2012.

Public Board Meetings will be held on February 1 and 15, 2012.

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