

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 1, 2010

Time: 10:05 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Lee
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Heyck, Robinson and Wender; Accounting Officer
Davis, and Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for August 18, 2010, were approved 3-0.
2. **Public Comments:** None.
3. **Chairperson Report:** There was nothing new to report on the budget. The Governor has issued a directive ordering all agencies to cease the hiring of employees (including the categories of retired annuitant, permanent intermittent, seasonal, temporary help, and student assistant). The hiring freeze shall also apply to the transfer of employees between State agencies, the promotion of employees, and the contracting for individuals to perform services. Every effort shall be taken to avoid overtime for employees. Department of Finance will only accept budget change proposals under limited circumstances. The ALRB received direction on our transition document from LWDA. Accounting Officer Davis was presented an Award for Achieving Excellence in Financial Reporting from Office of the State Controller. The ALRB's estimated current fiscal year budget was reviewed.
4. **General Counsel Report:** Options for the most effective usage of staff and office space in both Visalia and El Centro offices was discussed. The Board and General Counsel discussed relocation and possible closure of the El Centro office due to retirements, workload shifts and budgetary constraints. The lack of office space and parking in the Visalia Regional Office remains a concern. Three charges have been filed since our last meeting.

5. Executive Officer Report:

ELECTION REPORT

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

PENDING ELECTION MATTERS:

Lassen Dairy dba Meritage Dairy, 07-RC-4-VI

On September 4, 2007 UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Lassen Dairy dba Meritage Dairy. The employer is a dairy located in Bakersfield with approximately 25 employees. An election was held on September 11, 2007 with the following results:

UFCW	17
No Union	15
Unresolved Challenged Ballots	<u>6</u>
Total	38

As the unresolved challenged ballots were outcome determinative, the Regional Director investigated the challenges and issued his report on challenged ballots on November 9, 2007. The Employer filed exceptions to that report on November 19, 2007. The Board issued its decision on challenged ballots on February 15, 2008. A hearing on the three (3) challenged ballots was held on March 18, 2008. On April 22, 2008 the Investigative Hearing Examiner (IHE) issued his decision in this matter. No exceptions were filed and the Executive Secretary issued his order making the IHE decision final on May 12, 2008. On May 13, 2008 the Regional Director opened and counted the three challenged ballots and issued an amended tally with the following results:

UFCW	17
No Union	18
Unresolved Challenged Ballots	<u>2</u>
Total	37

Since the two remaining challenged ballots are outcome determinative and are dependent on the processing of ULP charges involving the two affected workers, the Executive Secretary has requested that the investigation of charges pertaining to Juan Alberto Tostado and Jose Antonio Tostado be expedited. On October 28, 2008 the Visalia Regional Director issued a complaint in this matter. A hearing on the related ULP's was held March 24 and 25, 2009. Post-hearing briefs were received May 8,

2009. On June 1, 2009 the ALJ issued his decision in this matter. Both the employer and charging party filed exceptions to the ALJ decision on June 24, 2009. Reply to exceptions briefs were filed July 7, 2009. On October 28, 2009 the Board issued its decision on the companion ULP matter. On November 30, 2009 the employer filed a petition for writ of review with the 5th DCA. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent ALRB's brief was filed February 16, 2010. Petitioner's reply brief was filed March 8, 2010. On May 26, 2010 the 5th DCA summarily denied the petition for review filed by Lassen. The employer did not seek review of this ruling and the ulp matter is now fully resolved.

On June 22, 2010 the Regional Director issued a final tally of ballots.

UFCW	17
No Union	18
Unresolved Challenged Ballots	<u>1</u>
Total	36

On August 17, 2010, the Executive Secretary issued his order dismissing the employer's election objections. Any request for review is due August 27, 2010.

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.

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.

Nurseryman'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.

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

Deardorff Family Farms, 2009-CE-057-VIS

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

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

The ALJ's decision issued August 23, 2010. Exceptions are due September 16, 2010.
Reply briefs are due September 30, 2010.

CASES PENDING EXCEPTIONS OR REPLY:

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

The ALJ's decision issued August 5, 2010. Exceptions are due August 30, 2010.
Reply briefs are due September 13, 2010.

CASES PENDING BOARD DECISION OR ACTION:

None.

CASES SETTLED OR RESOLVED:

San Martin Mushrooms, 07-CE-44-SAL & 07-CE-66-SAL

On April 25, 2010, the Salinas Regional Director issued a closing letter as all terms of the settlement agreement have been met.

San Martin Mushrooms, 2008-CE-17-SAL, et al.

On April 25, 2010, the Salinas Regional Director issued a closing letter as all terms of the settlement agreement have been met.

San Martin Mushrooms, 2008-CE-34-SAL

On April 25, 2010, the Salinas Regional Director issued a closing letter as all terms of the settlement agreement have been met.

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:

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures – The next meeting is scheduled for September 15, 2010 at 10 a.m. Various IT reports are being prepared at this time.
- b. Policy Committee Report: Last batch of policies approvals due today. Policy committee meeting rescheduled to end of September.
- c. Compliance: A memo has been circulated exploring possible improvements to make compliance easier or more effective.
- d. Annual Report: Executive Secretary circulated a draft report with changes due Wednesday, September 1, 2010.

7. Master Calendar

The Executive Secretary reported progress on reports due.

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

SB 1474, as introduced, Steinberg. Labor representatives: elections.

As introduced, this was a card check bill that was identical to SB 789, which was vetoed by the Governor in 2009. The original bill is summarized below.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

The August 2 amendments stripped the bill of all of the provisions summarized above. As amended, the bill instead would authorize the Board, under specified circumstances, to set aside an election where there has been misconduct by the employer affecting the right of the employees to vote and to certify a labor organization as the exclusive bargaining representative for a bargaining unit if the organization had previously presented the board with authorization cards signed by more than 50% of the employees in that bargaining unit. In addition, it would establish a 3-month time period for the issuance of a final Board decision in election objection cases involving a certification election.

The bill passed from committee with the author's amendments and was read a second time and was amended. The bill was re-referred to the committee on appropriations. The bill was amended on August 5 and 12. On August 16, the bill passed the Assembly and was sent to the Senate. On August 18, 2010, the bill passed out of the labor and industrial relations committee. On August 19, 2010, the Senate concurred with the Assembly amendments and the bill was sent to enrollment.

8. Regulations – Nothing new.

9. Personnel – Draft language regarding the Board Counsel IV position will be circulated.

10. Roundtable –

Executive Secretary Barbosa will make a presentation at the Mexican Consulate's office on September 2, 2010, at 9:30 a.m.

California State Employee Charitable Campaign Kickoff will be held on September 2, 2010, on the West Steps of the Capitol. The Charitable Campaign Kickoff breakfast will be held on September 9, 2010.

The public meeting adjourned at 12:50 p.m.