

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 22, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Michael Lee
Staff Present: Executive Secretary Barbosa, Regional Director Alderete;
Administrative Law Judge Soble, Board Counsel Wender, Heyck,
and Robinson; and Analyst Massie
Others Present: Freddy Sanchez, UFCW, Local 101

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for September 1, 2010, were approved 3-0.
2. **Public Comments:** Mr. Sanchez has been working on a merger of United Food and Commercial Workers local unions. Eight unions are merging into UFCW Local 5.
3. **Chairman Report:** There is nothing new on the budget. The transition and legacy documents were sent to the Labor and Workforce Agency last week.
4. **General Counsel Report:** Six new charges have been filed in the Salinas and Visalia Regional Offices since the last Board meeting. Regional Director Alderete presented his evaluation regarding the impact of closing the ALRB El Centro Sub-Regional Office while continuing to provide service to the region. It is proposed that one day per month a field examiner would visit each of five EDD One-Stop Career Centers in Thermal, Blythe, Indio, Calexico and El Centro. Mr. Alderete and Field Examiner Torres met with individuals from the EDD one-stop centers, California Rural Legal Assistance, and the Laborers union. Positive responses were received from both EDD and the Laborers. Mr. Alderete will provide a written report of his findings to the Board by October 20, 2010. It was proposed that a complete business plan be submitted to the ALRB's Ad Hoc Committee for review and response. Additionally, Mr. Alderete reported on the status of cases in his office and noted that a petition for unit clarification has been filed regarding an employer with approximately 7,000-

9,000 employees. A Regional Director motion to make cases eligible for Agricultural Employee Relief Fund payout in several cases is forthcoming. On September 9, 2010, Governor Schwarzenegger reappointed General Counsel Lee.

5. Executive Officer Report:

ELECTION REPORT

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

The UFW filed eight (8) NAs and one (1) NO with the ALRB:

The UFW filed an NA at Giumarra Vineyards Corporation on September 9, 2010.

The UFW filed an NA at Castle Rock Enterprises on September 16, 2010.

The UFW filed an NA at VB Zaninovich on September 16, 2010.

The UFW filed an NA at Delano Farms on September 16, 2010.

The UFW filed an NA at Four Star Fruit on September 16, 2010.

The UFW filed an NA at Giumarra Farms on September 16, 2010.

The UFW filed an NA at Kovacevich 5 Farms on September 16, 2010.

The UFW filed an NA at Kirshenman Enterprises on September 20, 2010.

The UFW filed an NO at Giumarra Farms on September 16, 2010.

The UFW filed an NO at Sun Farming Farming on September 20, 2010.

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. As neither party sought review of this order, the Executive Secretary issued a certification of results of election on September 3, 2010. This matter is now fully resolved and will be removed from this report.

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. 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.

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.

BACKPAY SPECIFICATIONS ISSUED

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

On September 9, 2010, the Regional Director issued a backpay specification for one employee alleging backpay owing in the amount of \$15,843.

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

On September 21, 2010, the investigative hearing examiner issued his prehearing report. 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.

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 were received on September 20, 2010. Reply briefs are due September 30, 2010.

CASES PENDING EXCEPTIONS OR REPLY:

CASES PENDING BOARD DECISION OR ACTION:

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

The ALJ's decision issued August 5, 2010. General Counsel filed exceptions to the ALJ decision on August 30, 2010. Reply briefs were filed September 13, 2010. The matter is now pending before the Board for decision.

CASES SETTLED OR RESOLVED:

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 committee met on September 15 with Consultant Guida to discuss the next set of templates. Mr. Guida has finished the complaint template. Changes were made to the case time tracking case numbers sort order. The compliance and settlement sections of the database will be reconfigured and will be identified as remedies. A revised list of reports was given to Mr. Guida. We will be discussing succession planning with regard to the system. Member Shiroma is working with Mr. Guida on tracking time spent on specific items.
- b. Policy Committee Report: The policy committee will be meeting at a time and date to be decided in October.

- c. Compliance: Board Member Rivera-Hernandez reported that the compliance committee met and discussed possible alternatives to current practices used to calculate make-whole awards. The committee also discussed possible ways to make tracking discriminatees easier.
- d. Annual Report: ALJ Soble and Analyst Massie will be incorporating additional information received in response to a Board member request.

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 percent 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. On September 2, 2010, the bill was enrolled and sent to the Governor for signature.

8. Regulations – Nothing new.

9. Personnel – Nothing new.

10. Roundtable –

On September 22, 2010, at 1:00 p.m., the Assembly Committee on Labor and Employment will be holding an oversight hearing related to two ALRB compliance matters, Ace Tomato and San Joaquin Tomato. Executive Secretary J. Antonio Barbosa, General Counsel Michael Lee and Regional Director Lawrence Alderete will be presenting testimony.

The Board will hold its public meeting in the ALRB Salinas Regional Office, 342 Pajaro Street, Salinas, California, on October 20, 2010, at 1:30 p.m.

The Regional Director's Quarterly Meeting will be held on October 12, 2010, at 1:30 p.m.

The public meeting adjourned at 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.