

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 3, 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, Board Counsel Heyck and Wender,
ALJ Soble, Analyst Massie, Accounting Officer Davis and Business
Services Officer Winston
Others Present: Freddy Sanchez, United Food Commercial Workers Union

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for October 20, 2010, were approved 3-0.
2. **Public Comments:** Mr. Sanchez updated the board on the merger of United Food and Commercial Workers Local 101 into Local 5. Seven locals have already merged with Local 5. Local 5 will be the largest UFCW local on the West Coast.
3. **Acting Chair Report:** The next LWDA meeting will be held on November 10. The Department of Finance informed us that our Workforce Cap reduction will be increased by \$73,000. Guidance from the Department of Personnel Administration has been received regarding self-directed furloughs for attorneys. The California Morning Report subscription expired. The Board discussed the necessity of the service and voted 3-0 to authorize the renewal of the subscription to the Capitol Morning Report noting there will be fewer subscribers.
4. **General Counsel Report - Potential Closure of ALRB El Centro Sub-Regional Office:** The lease on the El Centro office expires on February 28, 2011. The termination terms of the current lease were reviewed. A soft-term month-to-month lease becomes effective on March 1, 2011, subject to 30-day termination notice by either party. A request for input regarding the potential closure will be sent to all interested parties.

General Counsel Lee reported that the service contract on the agency's video conferencing equipment expires on November 15, 2010. Service contract options will be explored.

The Board discussed Mr. Lee's status memo regarding outstanding compliance cases.

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. 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. The investigative hearing is scheduled for December 13-17, 2010.

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 Regional Director issued his report on challenged ballots on October 25, 2010. Exceptions to the report are due November 4, 2010.

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. The Regional Director's report on challenged ballots issued October 7, 2010. Exceptions to the report are due November 17, 2010.

Henry A. Garcia Dairy, 2010-RD-003-VIS

On October 25, 2010, agricultural employee Joe Olivera filed a decertification petition with the Visalia Regional Office seeking to remove the United Food and Commercial Workers as the exclusive bargaining representative of Henry A. Garcia Dairy's agricultural employees. Henry A. Garcia Dairy is a dairy located in Tulare CA with approximately 9 employees. An election was held on November 1, 2010, with the following results:

UFCW	0
No Union	8
Unresolved Challenged Ballots	<u>0</u>
Total	8

Election objections, if any, are due November 8, 2010.

D'Arrigo Bros. of California, 2010-RD-003-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 County and, according to the petition, has approximately 1500 employees. The employer's response is due Thursday, November 4, 2010. An election, if appropriate, would be held on or about Tuesday, November 9, 2010. The Executive Secretary is requesting additional staff support from both the Labor Agency and the NLRB to assist in the conduct of this election.

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 matter is pending investigation by the Regional Director.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

HEARINGS SCHEDULE

Deardorff Family Farms, 2009-CE-057-VIS

December 7, 8 and 9, 2010

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

December 13, 2010

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

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

Exceptions are due November 17, 2010

CASES PENDING BOARD DECISION OR ACTION:

None.

CASES SETTLED OR RESOLVED:

Monterey Mushrooms, Inc., 07-CE-60-SAL

The region has obtained full compliance in this matter. One farmworker received \$52,500 and all non-monetary remedies have been complied with. A closing letter issued on October 28, 2010.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

The Board issued its decision in Temple Creek Dairy, Inc. on October 29, 2010.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

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

Petition for writ of review is due November 28, 2010.

MISCELLANEOUS:

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy. The committee met October 27, 2010, to continue discussion of the charge reporting process. Work continues on documenting procedures. There will be a meeting today at 1:30 p.m. to discuss what should be tracked on our complaint e-form versus the case docketing system. Mr. Guida continues work on ALJ legal templates.

- b. Policy Committee Report: Member Rivera-Hernandez requested that final edits be submitted to the latest group of policies circulated.
- c. Compliance: The Board discussed a proposed amendment to the Unemployment Insurance Code section 1095 inserting an exception in the confidentiality provision to include the ALRB. The effectiveness of appeal bonds in the amount of the order, decision, or award and to the Mandatory Mediation Act were also discussed.
- d. Master Calendar

The Executive Secretary reported progress on reports due.

7. Legislation – Update, if any, on pending legislation affecting the ALRB: None.

8. Personnel – Executive Secretary Barbosa reported a former student assistant is available. Due to the current hiring freeze, we will be unable to offer him a paid position.

9. Roundtable:

The 29th Annual Agribusiness Management Conference will be held on November 9, 2010, at the Radisson Hotel and Conference Center in Fresno, California.

A Farewell Reception for State Chief Information Officer Teri Takai will be held on November 3, 2010, from 5-8 p.m. at Chops Steaks Seafood and Bar located at 1117 11th Street, Sacramento, in the Barbelo Room.

The public meeting adjourned at 12:42 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.