

**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 1, 2010**

Time: 10:15 a.m.  
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero  
Staff Present: Executive Secretary Barbosa, ALJ Soble, Board Counsel Heyck, Robinson and Wender; and Analyst Massie  
Others Present: Ben Ebbink, Chief Consultant, and Shannon McKinley, Associate Consultant, Assembly Committee on Labor and Employment

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for November 17, 2010, were approved 3-0.
2. **Public Comments:** None.
3. **Acting Chair Report:** On November 22, 2010, Robert P. Roy, General Counsel of the Ventura County Agricultural Association, filed his response to the Board's request for input on the potential closure of the El Centro Regional Office. Comments regarding the potential closure will be discussed at the December 17<sup>th</sup> Board meeting. Department of Finance has issued Budget Letter 10-38 regarding the reduction in IT operating expenses and equipment related to Workforce Cap Reductions. Departments must develop plans to achieve the identified targets and return the completed plans to Finance no later than December 23, 2010. The Department of Finance, Office of State Audits and Evaluations (Finance), will be requesting all agencies' annual management representation letter, which is required as part of the State's single audit. Agencies will be notified in January 2011 of the due date of its Single Audit Management Representation Letter on operations for the fiscal year ended June 30, 2010.
4. **General Counsel Report:** A decertification election was held at D' Arrigo Bros. on November 17, 2010. The regional director impounded the ballots in the election pending investigation of an unfair labor practice charge filed by the incumbent union UFW on November 24, 2010. Charged party interviews are being set for next week.

## 5. Executive Officer Report:

### ELECTION REPORT

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

No NAs or NOs filed during this reporting period.

#### 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 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 were filed November 4, 2010. The matter is pending before the Board for decision.

**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 were received November 17, 2010. The matter is pending before the Board for decision.

**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 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. The region is setting up charged party interviews for next week.

**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 8, 2010, to respond to the region's request for information. The matter is pending investigation by the Regional Director.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

#### **United Farm Workers (Dole Berry South—formerly Coastal Berry South) 2008-CL-005-VIS**

On November 23, 2010, the Visalia Regional Director issued a complaint against the United Farm Workers alleging that the union had failed to properly represent a bargaining unit member and breached its duty of fair representation.

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

None.

### **HEARINGS SCHEDULE**

#### **Deardorff Family Farms, 2009-CE-057-VIS**

December 7, 8 and 9, 2010

On November 30, 2010, the Executive Secretary took the hearing off calendar as the Regional Director had withdrawn the complaint.

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

December 13, 2010

#### **Hein Ranch/MDR Farms, 2009-CE-021-VIS**

TBD

### **CASES PENDING ALJ/IHE DECISION:**

None.

### **ALJ/IHE DECISIONS ISSUED:**

None.

### **CASES PENDING EXCEPTIONS OR REPLY:**

None.

### **CASES PENDING BOARD DECISION OR ACTION:**

South Lakes Dairy Farm, 2010-RC-002-VIS

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

### **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:**

None.

**COURT LITIGATION:**

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

Petition for writ of review was due November 28, 2010. No petition was filed and this matter is now fully resolved.

**Ace Tomato Company, Case No. C066574**

On November 10, 2010, the employer filed a petition for writ of review in Ace Tomato Company, Case No. C066574. The certified record and the Board's preliminary opposition were filed November 19, 2010. On November 30, 2010, Spencer H. Hipp, attorney for petitioner, filed an application for extension of time to file any reply to ALRB's preliminary opposition.

**MISCELLANEOUS:**

None.

**6. Special Projects**

- a. Information Technology Committee: Update/Case Tracking System Policy – The committee met on November 30, 2010, with Steve Guida to review priorities for the remainder of the fiscal year. The committee is working on documenting all procedures to provide consistency among offices and for the purpose of succession planning. The next meeting is scheduled for December 9, 2010.
- b. Policy Committee Report: Member Rivera-Hernandez is completing the final review of pending policies.
- c. Compliance: The Board previously approved moving ahead with two pieces of legislation. Staff will continue to further investigate possible remedies and statutory changes. Mr. Ebbink of the Assembly Labor and Employment Committee suggested inquiring into a partnership with EEOC to distribute Agricultural Labor Relations Act (ALRA) information during the course of EEOC

investigations. Discussions continued regarding ideas for achieving more effective compliance with the ALRA.

d. Master Calendar: The Executive Secretary reported progress on reports due.

**7. Legislation** – Nothing new.

**8. Personnel** – Executive Secretary Barbosa will schedule an interview with the volunteer intern.

**9. Roundtable** – Nothing to report.

The public meeting adjourned at 11:40 a.m.

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