

**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 21, 2011**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden  
General Counsel: General Counsel Torres-Guillén  
Staff Present: Executive Secretary Barbosa, Board Counsel Wender and Heyck,  
and Analyst Massie  
Others Present: Bryan Little, Director of Labor Relations, California Farm Bureau  
Federation; Tiffany Wong, Wine Institute

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for December 7, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** The General Counsel and Chairwoman met with Department of Industrial Relations Director Baker, representatives of the Department of Industrial Relations and consultants from UC Berkeley regarding effective outreach strategies. A proposal for an ALRB outreach program will be submitted by the first week of January. The Chairwoman reported on the review of the budget for the current year. Chairwoman Shiroma extended thanks to Board Member Migden whose term is ending at the end of December for her service with the ALRB.
- 4. General Counsel Report:** General Counsel Torres-Guillén reported on the hiring of 3 new attorneys. Training for the new counsel will be held in Sacramento the first week of January. The General Counsel will be in El Centro on December 27<sup>th</sup> and 28<sup>th</sup> conducting interviews for staff. She is in the final stages of conducting field examiner interviews and plans to hire a few more people by the end of the year.
- 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 matter is now pending the opening and counting of the resolved challenged ballots, the issuance of a final tally of ballots and the resolution of the petitioner's election objections, if necessary.

**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 and extended the date for exceptions to January 31, 2012, and for the reply briefs to 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 due December 22, 2011. On December 20, 2011, the UFW requested a three-week extension of time to January 12, 2012, to file its post-hearing brief. The Executive Secretary granted the union's request on December 21, 2011.

### **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 February 10, 2012, to file its post-hearings brief. The Executive Secretary granted the union's request on December 21, 2011.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

No new complaints have issued.

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

**HEARINGS IN PROGRESS**

None.

**HEARINGS SCHEDULED**

None.

**CASES PENDING ALJ/IHE DECISION:**

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

The post-hearing briefs are due December 21, 2011.

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

The post-hearing briefs are due January 12, 2012.

**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:**

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

IHE Decision issued December 19, 2011

**CASES PENDING EXCEPTIONS OR REPLY:**

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

IHE Decision issued December 19, 2011

Exceptions are due January 31, 2012

Reply briefs are due February 10, 2012

**CASES PENDING BOARD DECISION OR ACTION:**

**San Joaquin Tomato Growers, 2011-MMC-001**

UFW's response to Order to Show Cause filed December 13, 2011

Employer's reply is due December 21, 2011

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

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

Board decision issued its Order Denying Motion for Reconsideration on December 21, 2011

**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 is due December 21, 2011.

**COURT LITIGATION:**

None.

**MISCELLANEOUS:**

Nothing to report.

**6. Special Projects**

- a. Information Technology Committee: A meeting was held with Steve Guida on December 21<sup>st</sup> to review the docketing procedures in the Executive Secretary's office.
- b. Annual Report FY 2010/11: The ALRB's annual report for fiscal year 2010/2011 issued on December 9, 2011.
- c. Financial Integrity and State Managers Accountability Act (FISMA) Report –A few additional edits will be made to the FISMA report. Chairwoman Shiroma will review the final document.
- d. Master Calendar

The 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. To this date, no public comment to the 2011 regulations package has been received. The deadline for public comment is December 28, 2011. The public hearing process was reviewed. The Board voted 3-0 to choose January 18, 2012, for the public hearing. Should a hearing room not be available on that date, alternate dates are January 17<sup>th</sup> or the afternoon of January 19<sup>th</sup> and is otherwise delegated to the Executive Secretary to schedule.

- 8. Legislation** – *Update, if any, on pending legislation affecting the ALRB*—Nothing to report.
- 9. Personnel** – Salinas Field Examiner Octavio Galarza retired the end of the month. The General Counsel and Board extended their thanks to Mr. Galarza for over 33 years of service.
- 10. Roundtable** – Member Migden thanked everyone for the privilege of working with them at the ALRB.

The public meeting adjourned at 11:20 a.m.

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