

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 4, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Michael Lee
Staff Present: Administrative Law Judge Soble, Board Counsel Heyck, and
Wender, Executive Secretary Barbosa

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for July 21, 2010, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** Board Member Rivera-Hernandez reported on the quarterly all-staff meeting held on August 3, 2010. She recapped the numerous fiscal year-end reports that had been completed and submitted to the appropriate agencies. She also emphasized the need to keep expenditures to a minimum, follow the recently enacted procurement policy, and notify the Board of any potential large expenditures to allow the greatest flexibility in the next fiscal year.
- 4. General Counsel Report:** General Counsel Lee reported that the two most recent elections were adequately staffed despite the fact that some employees were not able to travel due to the lack of a State budget. However, Mr. Lee pointed out that the elections were conducted at relatively small operations, and should election petitions be filed at large operations, the ALRB would not be able to cover the costs of travel and overtime that staff would incur. Travel is a routine part of regional staff members' work. If the ALRB is unable to pay employees' travel expenses, the majority of the regions' work is not possible. Mr. Lee also discussed other issues related to the lack of a budget that are currently impacting the regional offices.

General Counsel Lee also reported that 5 new ULP charges had been filed since the last Board meeting.

5. Executive Officer Report:

ELECTION REPORT:

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

NO filed at Anthony Vineyards on July 21, 2010.

NO filed at Sun World on July 28, 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

The Executive Secretary is reviewing the election objections filed by the employer.

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.

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. Election objections, if any, are due August 9, 2010.

San Martin Mushrooms, 2010-RD-002-SAL

On July 27, 2010 agricultural employee Sacramento Alonzo filed a decertification petition with the Salinas Regional Office seeking to remove the United Farm Workers of America as the exclusive bargaining representative of San Martin Mushrooms' agricultural employees. San Martin Mushrooms is a grower of mushrooms located in San Martin CA with approximately 34 employees. An election was held on August 3, 2010 with the following results:

UFW	5
No Union	22
Unresolved Challenged Ballots	<u>0</u>
Total	27

Election objections, if any, are due 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

Prehearing held July 16, 2010

Hearing previously scheduled for July 26, 2010

Deardorff Family Farms, 2009-CE-057-VIS

Prehearing Conference held July 20, 2010

Hearing previously scheduled for August 3, 2010

CASES PENDING ALJ/IHE DECISION:

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

The post-hearing briefs were filed July 16, 2010 and the matter is pending the ALJ's decision.

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

The hearing opened and closed on July 20, 2010, and the matter is pending the ALJ's decision.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

None.

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:

None.

MISCELLANEOUS:

Master Calendar:

The Executive Secretary reported progress on reports due.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures- The ALRB has transferred to the Statewide SPAM filter system.
- b. Policy Committee Report: Member Rivera-Hernandez requested that Board Members make their final edits to the attendance and leave policies.
- 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: Executive Secretary provided the Board and General Counsel with a progress report on the 2009/10 ALRB annual report.

7. **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. A hearing is scheduled for August 4, 2010.

AB 2537, as introduced, Silva. State agencies: adjudications: presiding officers.

Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law provides for the disqualification of a presiding officer for bias, prejudice, or interest in the proceeding. Existing law authorizes an agency that conducts an adjudicative proceeding to provide by regulation for preemptory challenge of the presiding officer. This bill would require that an agency that conducts an adjudicative proceeding provide by regulation for preemptory challenge of the presiding officer in cases where the presiding officer is an administrative law judge. The April 6 amendments added the following provision, which effectively exempts the ALRB from its provisions.

(e) Subdivision (d) shall not apply to an agency that has five or fewer administrative law judges and has an existing system of internal appellate review for requests for disqualification of an administrative law judge in which the disqualification determination is made by the agency.

The bill was introduced on February 19, 2010. The bill was read for the first time on February 22 and referred to the Committee on Business and Professions on March 18. On April 6, 2010, the bill was set for the first hearing. The hearing was cancelled at the request of the author. On April 14, 2010, the bill was amended and re-referred to the Committee on Business, Professions and Consumer Protection, read a second time and amended.

On August 2, 2010, the bill was amended to delete paragraph (e) above and replace it with the following:

(e) Subdivision (d) shall not apply to any agency that meets either of the following criteria:

(1) The agency has had more than 1,000 scheduled proceedings in each of the last three fiscal years.

(2) The agency has a system of reconsideration and review of denials for requests for disqualification of an administrative law judge for cause in which the administrative law judge being challenged does not participate in the disqualification decision.

Because the ALRB, pursuant to Regulation section 20263, provides for Board review of an ALJ's denial of a request for disqualification, it would fall under the exemption set forth in new subdivision (e)(2).

The bill passed from committee on August 2, 2010 with the author's amendments. The bill was read a second time, amended and re-referred to the committee on appropriations.

8. Regulations – Nothing new.

9. Personnel – Nothing new.

10. Roundtable –

Executive Secretary Barbosa will be attending the Respondent's Roundtable on August 10, 2010.

Executive Secretary Barbosa will be participating in the Mexican Consulate Office labor law presentations scheduled for the end of August and beginning of September.

The next Board meeting will be held on August 18, 2010 in the ALRB's Visalia regional office.

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