

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 17, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Michael Lee
Staff Present: Board Counsel Heyck, Robinson and Wender; ALJ Soble and Executive Secretary Barbosa
Others Present: Ben Ebbink, Chief Consultant to the Assembly Committee on Labor and Employment

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for November 3, 2010, were approved 3-0.
- 2. Public Comments:** Mr. Ebbink asked when the decision would be made regarding the closure of the El Centro office and requested further workload information. The deadline for comments is December 6, 2010. The Board indicated it will discuss the comments received and could make a decision at its December 15, 2010, Board meeting.
- 3. Chairman Report** – General Counsel Lee and Member Rivera-Hernandez attended the Labor and Workforce Development Agency meeting last week. Discussion of the transition to a new administration continued. Member Rivera-Hernandez extended thanks to all sister agencies for their assistance with the D’Arrigo election. The increase in the workforce cap reduction to the ALRB’s budget by the Department of Finance was also discussed. The Board voted 3-0 to rescind its earlier conditional authorization to renew the subscription to the Capitol Morning Report, due to the budget constraints.
- 4. General Counsel Report** - A letter requesting input from interested parties regarding the potential closure of the El Centro office has been distributed asking for responses by December 6, 2010. A request has been made to Labor Agency to fill key vacancies in regional offices and to allow overtime to hasten the completion of backpay specifications but no response has been received.

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. 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 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.

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, California 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, were due November 8, 2010. No objections were filed by either party and Executive Secretary issued a certification of results of election on November 10, 2010. This matter is now fully resolved and will be removed from this report.

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 has approximately 1,665 employees. An election is scheduled for Wednesday, November 17, 2010, from 6 a.m. to 4 p.m. with polling locations in Spreckles, Gonzalez and Calipatria CA.

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:

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:

COMPLIANCE CASES CLOSED:

CASES TRANSFERRED TO BOARD FOR DECISION:

South Lakes Dairy Farm, 2010-RC-002-VIS
Nurseryman's Exchange, Inc., 2010-RC-003-SAL

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 is due November 28, 2010.

Ace Tomato Company, Case No. C066574

The employer filed a petition for writ of review in Ace Tomato Company, Case No. C066574. The certified record is due November 22, 2010.

MISCELLANEOUS:

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy – The committee met internally and met with Steve Guida regarding internal procedures for tracking complaint-to-compliance data. The goal is to remove redundancies, assure procedures are consistent agency-wide, and to plan for succession. The procedures were refined and a meeting will be schedule with the regions. Conversion of the ALRB docketing system from Word to Excel or Access was discussed.
- b. Policy Committee Report: Member Rivera-Hernandez requested that Board Members submit their final edits to the Health, Safety and Ergonomics Program and Awards and Employee Recognitions Program policies.

c. Compliance: The Board continued to discuss ideas for achieving more effective compliance with the Agricultural Labor Relations Act (ALRA). A revised amendment to Unemployment Insurance Code Section 1095 to add an exception in the confidentiality provision to include the ALRB, and an amendment to ALRA section 1060.8 to include a requirement for the posting of an appeal bond where the Board order specifies an amount owing were discussed. Mr. Ebbink commented that the legislature has approved an amendment of section 1060.8 which will take effect January 1, 2011. Proposed amendments to section 1060.3 of the ALRA pertaining to bargaining makewhole and penalties for willful or repeated violations were also discussed. The Board voted 3-0 to approve proposing an amendment to the Unemployment Insurance Code and to ALRA section 1060.8 (appeal bond), and will continue discussion of ideas pertaining to bargaining makewhole and penalties.

d. Master Calendar

The Executive Secretary reported progress on reports due.

We have five (6) master calendar listings, three have been resolved and three are pending.

7. Legislation – Nothing new.

8. Personnel – A law student at The George Washington University has expressed an interest in a summer internship.

9. Roundtable

Nothing to report.

The public meeting adjourned at 12:15 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.