

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 16, 2011

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

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for February 2, 2011, were approved 3-0 without objection.
2. **Public Comments:** None.
3. **Acting Chair's Report:** Governor Brown has issued a number of Executive Orders: enacting a statewide hiring freeze, a Review of Fleet and Home Storage Permits, a reduction in cell phones, and the purchase of outreach items. The ALRB does not have any home storage permits the Board and General Counsel identified cell phones to be eliminated, and the ALRB does not have a budget for outreach items. The Assembly Budget Subcommittee No. 4 on State Administration met on February 3, 2011. No changes were identified for the ALRB budget. The Legislative Analyst Office proposed the merger of the ALRB with the Public Employees Retirement Board as a budget-balancing option for Fiscal Year 2011-12 should the Governor's proposed tax extension not be approved. The Board and General Counsel will provide information to LWDA to assist with decision making regarding the merger proposal. The Office of Information Security is requiring department directors approve all IT acquisition plans and submit IT acquisition plans under specified circumstances.
4. **General Counsel Report:** Since the last meeting a total of six new charges have been filed in the Salinas and Visalia regional offices. A settlement of \$5,100 was reached regarding a charge against Rocking S Dairy alleging a retaliatory termination. There has been a positive development in the tomato 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. 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 parties filed a joint motion for an extension of time to file post-hearing briefs to February 28, 2011, that was granted on February 3, 2011. The briefs are now due on February 28, 2011.

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 Board issued its decision on challenged ballots on December 17, 2011. A second prehearing conference is scheduled for February 23, 2011. The hearing is scheduled for March 1-4, 2011.

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. Any request for review is due February 17, 2011.

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 Regional Director has completed his investigation of the charges and will be issuing a complaint.

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. Election objections, if any, are due on Friday, February 18, 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 has granted the Employer an extension on February 1, 2011, to file a further response. The matter is under investigation and pending decision by the Regional Director.

COMPLAINT REPORT

COMPLAINTS ISSUED

Oasis Holsteins, 2009-CE-066-VIS

On February 8, 2011, the Regional Director issued a complaint against Oasis Holsteins alleging that the employer unlawfully verbally disciplined and later discharged two employees because they concertedly complained about working conditions.

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

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

Prehearing conference February 23, 2011

Hearing March 1-4, 2011

Lassen Dairy, Inc., 07-CE-37-VI

Prehearing conference March 1, 2011

Hearing March 22, 2011

United Farm Workers, 2007-CL-05-SAL

Prehearing conference March 15, 2011

Hearing April 5, 2011

HEARINGS IN PROGRESS

None.

CASES PENDING ALJ/IHE DECISION:

Martin Hein Ranch Company, 2009-CE-021-VIS

Prehearing conference held January 18, 2011

Hearing closed February 11, 2011

Pending receipt of transcripts and setting of post hearing brief due date

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

Hearing held December 13-17, 2010

Post-hearing briefs due February 28, 2011, with IHE decision to follow.

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:

Rocking S Dairy, 2008-CE-039-VIS

The Regional Director closed this case as all of the terms and conditions of the Informal Bilateral Settlement Agreement of the charge have been satisfactorily met.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

Nothing new to report.

MISCELLANEOUS:

On February 11, 2011, the ALRB received a Public Records Act (PRA) request from Govantra, a Roseville business entity. The request is asking for extensive administrative information for the time period from July 1, 2008, to February 4, 2011. The request is under review. The Board's initial response is due February 21, 2011. We have been notified by the Labor Agency that the preliminary response will be submitted by the Governor's Office.

6. Special Projects

- a. Information Technology Committee: The committee met on February 9 and reviewed workload for Consultant Guida through the end of the fiscal year and prioritized projects. The highest priority will be completion of the Remedy portion of the tracking system. A conference call will be held on February 23, 2011 with Regional Directors to review the case management process and new forms. Assuring the Accounting portion of the case management system is complete was identified as the second priority. A meeting will be scheduled in the near future for Mr. Guida to review with staff all reports available using the case management system.
- b. Policy Committee Report: Member Rivera-Hernandez has identified policies missing or not included in ALRB Policies and Procedures. The committee is updating those policies.

- c. Compliance: General Counsel Lee provided a status of compliance cases to the Board on February 11, 2011.
- d. Master Calendar

The Executive Secretary reported progress on reports due.

7. Legislation

SB 104, as introduced, Steinberg. Labor representatives: elections.

SB 104 is a card check bill that differs only in a few respects from SB 1474, which was vetoed last year by Governor Schwarzenegger. SB 104 would amend the Agricultural Labor Relations Act (Lab. Code §§ 1140, et seq.) to (1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; (2) impose a civil penalty of up to \$20,000 for the commission of specified unfair labor practices; and (3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief. SB 104 differs from SB 1474 in several minor respects, two of which are most significant. One is the addition of a \$10,000 fine for an employer's failure to timely provide an employee list (name, address, classification, etc.) after the filing of a "majority sign-up election petition." The other is the deletion of the requirement that representation cards utilized for a majority sign-up election contain a statement that no promises or threats were made to obtain the employee's signature and the deletion of an acknowledgement that the employee is aware of the ALRB's toll free number, which may be used to complain of coercion or other unfair labor practices. On February 10, 2011, the bill was referred to Committee on Labor & Industrial Relations.

SB 153, as introduced, Strickland. State boards and commissions: salaries: suspension.

Existing law provides for the payment of specified salaries to the members of various state boards and commissions. A member of a state board or commission may receive a per diem salary at a specified rate, except for a member whose salary is set pursuant to certain provisions of law.

This bill would prohibit members appointed to specified state boards and commissions, *including the ALRB*, from receiving a salary for the 2012-13, 2013-14, and 2014-15 fiscal years. This bill would authorize a member of a state board or commission who is prohibited from receiving a salary under these provisions to receive a *per diem payment of \$100* during those fiscal years. This bill is essentially identical to previous bills that were introduced seven of the last eight years, none of which made it out of committee. On February 10, 2011, the bill was referred to the Committee on Governmental Organization.

8. Personnel – Nothing new.

9. Roundtable – Nothing to report.

The public meeting adjourned at 11:25 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.