

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**August 3, 2011**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden  
General Counsel: General Counsel Michael Lee  
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and Robinson

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for July 27, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** Chairwoman Shiroma reported that a new monthly report on trust fund activities has been developed. This information will also be included in the annual report for Fiscal Year 2010/2011. The Board received an initial response on behalf of the Labor and Workforce Development Agency from Scott Vogel regarding the Board's efforts to obtain additional budgeted positions. Chairwoman Shiroma recommends that staff ensure that the purchasing protocol and sign-off procedure is followed carefully.
- 4. General Counsel Report:** General Counsel Lee reported that no new charges had been filed in either Regional Office. The compliance hearing in the San Joaquin Tomato Growers matter is scheduled to reconvene on August 15, 2011 in Modesto.
- 5. Executive Officer Report:**

**ELECTION REPORT**

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

**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. The matter is pending Board decision.

**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. Due to a scheduling conflict between both the assigned ALJ and one of the parties, the hearing previously scheduled for June 22, 2011, is canceled and has now been rescheduled for September 21 and 22, 2011. Executive Secretary Barbosa will be meeting with Assemblymember Jerry Hill today (August 3, 2011 at 11:30 AM) to address some questions Mr. Hill has about this case.

**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 is still in progress.

**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. The Executive Secretary will be scheduling a hearing to take evidence on four of the challenges set for hearing by the Board. On August 3, 2011 the Board issued an erratum correcting certain dates in the decision.

### **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. The matter is pending the Regional Director's report on unit clarification.

### **COMPLAINT REPORT**

#### **COMPLAINTS ISSUED**

None.

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

**Nurserymen's Exchange, Inc., 2010-RC-003-SAL**  
September 21 & 22, 2011

**Deardorff Family Farms, 2009-CE-057-VIS**  
Hearing to be scheduled

#### **HEARINGS IN PROGRESS**

**D'Arrigo, 2010-RD-004-SAL**

Hearing resumed July 11, 2011, and is in progress in Salinas.

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

Hearing held July 19 and 20, 2011. Hearing will be resuming August 15, 2011 in Modesto.

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

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

None.

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

**United Farm Workers, 07-CL-05-SAL**

Exceptions due July 21, 2011

Replies due August 26, 2011

**CASES PENDING BOARD DECISION OR ACTION:**

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

Exceptions received June 27, 2011

Reply filed July 7, 2011

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

**California Florida Plant Co., 2011-RC-01-SAL**

The Board's decision in 37 ALRB No. 2 issued August 1, 2011.

**REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:**

None.

**COURT LITIGATION:**

None.

**MISCELLANEOUS:**

Nothing to report.

**6. Special Projects**

- a. Information Technology Committee: Chairwoman Shiroma and Analyst Massie met with Michael Ochoa from the Office of Technology Services regarding the eventual migration of the ALRB's email to a statewide system. There will be three options to choose from. The change will not be made until the current contract with GroupWise expires at the end of this year. Information Technology Consultant Steven Wicklund has done some analysis on ways the ALRB can save money on internet service and will produce a formal report for the Board to review. The next meeting with Consultant Steve Guida will be on August 4, 2011. Mr. Guida is working on generating reports that are necessary to complete the annual report for fiscal year 2010/11. Chairwoman Shiroma asked Executive Secretary Barbosa to find out whether this year's annual report can be translated into Spanish.

- b. Annual Report FY 2010/11: The deadline to submit portions of the Annual Report is August 12, 2011.
- c. Master Calendar

The Executive Secretary reported progress on reports due.

**7. Legislation** – Nothing new.

**8. Personnel** – There is a meeting scheduled with the Department of Personnel Administration regarding the Attorney III and IV classifications.

**9. Roundtable**

Executive Secretary Barbosa will be making a presentation on the rights of farmworker rights under the ALRA at the Mexican Consulate's Office in Sacramento on August 29, 2011.

Board Member Migden reported that her visit to the Salinas regional office was interesting, productive, and that she enjoyed meeting the regional office staff.

The public meeting adjourned at 11:10 a.m.

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