

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**February 1, 2012**

Time: 10:03 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason  
General Counsel: General Counsel Torres-Guillén via video conference  
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,  
Board Counsel Wender and Robinson; Analyst Massie  
Others Present: Richard Friant, Certified Electronic Court Reporter; Carl Borden,  
Associate Counsel for California Farm Bureau Federation; Dave  
Puglia, Senior Vice President, Government Affairs and  
Communications, for Western Growers Association;  
ALRB Salinas Regional Office (via video conference) — Alegría de  
la Cruz; Eunice Suarez, Delia Martinez, Elena Atengco, Matina  
McDaniel, Sarah Martinez, and Stan Marubayashi  
ALRB Visalia Regional Office (via video conference) — Rey  
Valverde, Pauline Alvarez, Laura Camero, Sal Alatorre, Verónica  
Díaz, and Victoria Torrez

**OPEN SESSION**

- 1. Regulations—Board Deliberation on Public Comments Received and Possible Vote to Adopt Regulations to Implement Senate Bill No. 126; Update on State of Rulemaking Calendar:** *This portion of the meeting was electronically recorded.* After deliberating on the proposed regulations in light of the public comment received, the Board voted 3-0 to adopt the regulations to implement Senate Bill No. 126 with nonsubstantial changes recommended by its legal staff. The regulations, along with supporting documents, will be submitted to the Office of Administrative Law, which has thirty working days to approve or reject them and, if approved, file them with the Secretary of State. The Board will request that the regulations, if approved, go into effect upon filing with the Secretary of State. Dave Puglia stated he appreciated the Board's diligence and the hard work of staff. Carl Borden joined in Mr. Puglia's sentiment.

The Board recessed at 10:41 a.m.

The Board reconvened at 10:57 a.m.

**2. Public Comments:** None.

**3. Approval of Minutes:** The Board minutes for January 11 and 18, 2012, were approved 3-0 with minor changes.

**4. Chair's Report:** Labor and Workforce Development Agency senior management meetings will be held on an ad hoc basis. At the last meeting, Employment Development Department reported that jobs have increased and unemployment is down. The Advanced Manufacturing Strategic Plan is looking to increase manufacturing jobs in the international climate. The Chair clarified the interagency agreement with Labor Agency regarding the current-year budget. Monies will be available for new positions as well as for education and outreach.

**5. General Counsel Report:** The FISMA corrective action plan was submitted. The General Counsel is currently reviewing all cases in Salinas. She will be reviewing all cases in Visalia next week. The General Counsel reported on the status of cases in the regions. A new charge was filed following the new guidelines recently implemented by the General Counsel.

**6. 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. 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 opening and counting of the resolved challenged ballots was held on January 13, 2012. Pursuant to the Board's decision in Kawahara Nurseries, Inc., 37 ALRB No. 4, the Salinas Regional Office prepared two tallies, one excluding the ballots of the merchandisers and a second one including them. The separate tallies were necessary in order to preserve the vote count should the Executive Secretary issue a ruling on an objection to the Regional Director's designation of a statewide bargaining unit as opposed to separate bargaining units for the farm and merchandiser employees.

With respect to the tally of farm employees without the merchandiser employees, the tally was as follows:

UFW	71
No Union	71
Unresolved Challenged Ballots	23

With respect to the tally of farm employees with the merchandiser employees, the tally was as follows:

UFW	74
No Union	91
Unresolved Challenged Ballots	0

In neither case did the UFW receive a majority vote. On January 19, 2012, the Executive Secretary issued his order dismissing as moot the election objections petition filed by the UFW. Any request for review is due January 31, 2012.

**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. Exceptions to the IHE's decision were due January 31, 2012. Reply briefs are due February 10, 2012. No exceptions have been received yet.

**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 were filed January 23, 2012, and the matter is pending the Investigative Hearing Examiner's decision. On January 30, 2012, the Respondent/Employer filed a motion to strike General Counsel's post-hearing brief after page 150. The matter is pending the parties' positions and ruling by the Executive Secretary.

**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 filed on January 12, 2012, and the matter is pending the Investigative Hearing Examiner’s 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. 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 file its post-hearings brief. The Executive Secretary granted the union’s request and the post-hearing briefs are due on February 10, 2012 with the Investigative Hearing Officer’s decision to follow.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

No new complaints have issued.

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

### **HEARINGS IN PROGRESS**

None.

### **HEARINGS SCHEDULED**

#### **San Joaquin Tomato Growers, Inc., 2011-MMC-001**

February 8, 2012

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

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

The post-hearing briefs were received January 12, 2012. The matter is pending the IHE's decision

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

The post-hearing briefs were received January 23, 2012. The matter is pending the IHE's decision

#### **Sun World, 2010-UC-1-VIS**

The post-hearing briefs are due February 10, 2012

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

None.

### **CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:**

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

Exceptions are due January 31, 2012

Reply briefs are due February 10, 2012

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

Exceptions are due March 5, 2012

Reply briefs are due March 19, 2012

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

The request for review is due January 31, 2012.

**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:**

**George Arakelian Farms, Inc., 78-CE-11-E**

On January 27, 2012 the Board issued an order granting the General Counsel's Motion to Make Cases Eligible for Payout from AERF and Motion to Close Cases. (Admin. Order No. 2012-2.)

**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 was filed December 21, 2011. On December 23, 2011 the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011 the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012 in Modesto CA. On January 18, 2012 the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. On January 25, 2012, the UFW filed a request for ruling on the pleadings. On January 26, 2012, the employer filed its opposition to that request. On January 27, 2012 the Board denied the UFW's request. The hearing on the MMC matter will proceed as scheduled on February 8, 2012.

**COURT LITIGATION:**

None.



## **MISCELLANEOUS:**

Nothing to report.

### **7. Special Projects**

- a. Information Technology Committee: The Chair met with Consultant Guida to review all projects. She is working with Accounting Officer Davis who is retiring, to ensure the accounting application is ready for Ms. Davis' successor. The current plan is to move the entire case tracking system to a web-based system. The next meeting with Consultant Guida is Tuesday, February 7<sup>th</sup>. The Chair met with email migration consultants and has a better understanding of the project and deadlines. A way to enable the CGEN connection necessary for the email migration without incurring a sizable cost increase has been discovered and will be implemented.
- b. Education/Outreach: The General Counsel is waiting for a proposed interagency agreement from UC Berkeley. Board Member Mason has made available materials from a farm worker outreach program developed from CSU Fresno. There will be a meeting the afternoon of Tuesday, February 7<sup>th</sup>, to review the driver safety materials developed for CSU, Fresno.
- c. Master Calendar

The Executive Secretary reported on the progress on reports due.

**8. Legislation** – *Update, if any, on pending legislation affecting the ALRB*—Nothing to report.

**9. Personnel** – The Accounting Officer and Business Services Officer job announcements have been released. Joseph Wender was approved for reclassification to the Staff Counsel IV level. The interview process resumed for the Board Office Technician position on January 31, 2012.

### **10. Roundtable** –

General Counsel Torres-Guillén and Board Member Rivera-Hernandez will be panelists at the 32<sup>nd</sup> Annual Agricultural Personnel Management Association Annual Forum on Thursday, February 2, 2012, at the Cliffs Resort, Shell Beach, California

The California Grape and Tree Fruit League Government Relations events have been changed to February 22 and 23, 2012. A reception will begin at 5:30 p.m. on February 22 at Spataro Restaurant and Bar, 1415 L Street, Sacramento, followed by dinner at 7:00 p.m. On February 23, a meeting will be held from 9:00 a.m. to 12:00 noon at the office of Kahn, Soares & Conway located at 1415 L Street, Suite 400, Sacramento.

California Farm Bureau Federation Legislative Reception will be held on March 13, 2012, from 5:30 p.m. - 7:30 p.m. at Spataro Restaurant and Bar, 1415 L Street, Sacramento.

The US-China Exchange Council (USCEC) is interested in meeting with the ALRB to exchange information and experience on protecting, implementing, and enforcing the rights and justice to agricultural workers in the US and China. They are proposing a meeting date of Friday, February 24, 2012, meeting from 10:00 a.m. to 11:30 a.m.

McGeorge School of Law is holding their Career Night Thursday, February 16, 2012, from 5 p.m. to 7 p.m. Board Member Rivera-Hernandez is working with both UC Davis and McGeorge School of Law to establish a work study program and summer law clerk externship program to assist the Executive Secretary's Office.

The public meeting adjourned at 11:58 a.m.