

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 21, 2010

Time: 10:05 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Michael Lee, Assistant General Counsel Blanco
Staff Present: Executive Secretary Barbosa, Board Counsel Heyck, Wender and
Robinson, Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for July 7, 2010, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** General Counsel Lee and Member Rivera-Hernandez attended the Labor Agency meeting on August 13th. The ALRB's transition document for the incoming administration is due to Agency on July 30. A working draft will be circulated soon. A legacy document may need to be completed in the near future. LWDA will be informed if travel problems arise due to the lack of a budget. The Board will be visiting the Visalia Regional Office on August 17 & 18 and will hold its Board meeting in the Visalia Regional Office on August 18. The updated Disaster Recovery Plan has been sent to Office of Information Security. There will be no new allocation to the Agricultural Employee Relief Fund this year. The Board commended the regional office staff for their diligence in locating workers eligible to receive payment from AERF.
- 4. General Counsel Report:** Nine new charges have been filed since the last report. There is no new information on the El Centro sub-regional office lease. The Office of Emergency Services (OES) contacted General Counsel Lee and Executive Secretary Barbosa regarding the extreme heat situation throughout California. The ALRB's role is to provide interpretation services for OES in the event of an emergency. Executive Secretary Barbosa will look into reissuing the ALRB heat stress public service announcement. The General Counsel's Office may require the assistance of Professor Martin of UC Davis and retired annuitants to assist with compliance cases.

5. Executive Officer Report:

ELECTION REPORT:

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO): (13 NAs and 2 NOs)

- Four Star Fruit Company, 2010-NA-003-VIS filed July 13, 2010.
- Delano Farms, 2010-NA-004-VIS filed July 13, 2010.
- A Caratan 2010-NA-005-VIS filed July 13, 2010.
- Caliente Farms, 2010-NA-006-VIS filed July 13, 2010.
- Anthony Vineyards, 2010-NA-007-VIS filed July 13, 2010.
- Lucich Farms, 2010-NA-008-VIS filed July 13, 2010.
- Sun View, 2010-NA-009-VIS filed July 13, 2010.
- Castle Rock, 2010-NA-010-VIS filed July 13, 2010.
- Hronis Inc, 2010-NA-011-VIS filed July 13, 2010.
- Vincent B. Zaninovich & Sons, 2010-NA-012-VIS filed July 13, 2010.
- RB Sandrini, 2010-NA-013-VIS filed July 13, 2010.
- Sun Pacific Farming Co. 2010-NA-014-VIS filed July 1, 2010.
- Sun World, 2010-NA-015-VIS filed July 13, 2010.
- South Lakes Dairy Farm, 2010-NO-002-VIS filed July 12, 2010.
- Nurserymen's Exchange, 2010-NO-001-SAL filed July 13, 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 matter now returns to the Executive Secretary to process 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. A hearing is scheduled for July 26, 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, California, 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 are due July 26, 2010.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

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

Prehearing held July 16, 2010

Hearing: July 26, 2010

Deardorff Family Farms, 2009-CE-057-VIS

Prehearing Conference held July 20, 2010

Hearing: August 3, 2010

HEARINGS HELD:

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

Hearing: July 20, 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.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

None.

CASES SETTLED OR RESOLVED:

San Joaquin Tomato Growers, 93-CE-38-VIS

The Board approved the General Counsel request to withdraw its motion to close case and canceled the hearing scheduled for July 20, 2010.

COMPLIANCE CASES CLOSED:

None.

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

Master Calendar –

Response to Purchasing Authority Deficiency Report: The ALRB received purchasing authority from the Department of General Services but is required to submit additional information through a Purchasing Authority Deficiency Report due July 30, 2010 (next Friday). The matter is assigned to Lyta Winston and she is planning on completing the report by Tuesday, July 27, 2010. The draft response will then be forwarded to the Board and General Counsel for review on July 28, 2010 and, following revisions and approval, filed with DGS.

Update to Financial Integrity and State Manager's Accountability Act (FISMA): Our last corrective action plan was filed January 29, 2010. SAM Section 20000 requires that each corrective action plan filed be updated every six months until all corrections are complete. This matter is assigned to Antonio Barbosa. Our last corrective plan will be sent today to the Board, General Counsel and Regional Directors for updates. The updates will be due July 27, 2010. The draft response will then be forwarded to the team members for review and, following revisions and approval, filed with the Department of Finance.

Disaster Recovery Plan: The plan was due July 15, 2010. The plan was mailed on July 16, 2010.

There are no further Master Calendar items for the rest of July or the month of August at this time.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures—The last committee meeting was held on July 14th where the discussion centered on what information could be gleaned from the Case Tracking System for the annual report. Categories will be revised to more easily report information for annual reporting requirements. The next meeting is scheduled for July 22 at 1 p.m. The focus of that meeting will be on the compliance reporting feature and regional office templates.
- b. Policy Committee Report – Member Rivera-Hernandez reported that draft attendance and leave policies involving leaves of absence, family medical leave and military leave will be circulated this week for review and approval.
- c. Compliance – A subcommittee will be convened regarding an overview of compliance. The contract with EDD for wage information used to calculate

compliance is ready for renewal. Assistant General Counsel Blanco suggests meeting with the Director of EDD regarding the addition of items provided by EDD under the contract.

- d. Annual Report – Executive Secretary provided the Board and General Counsel with a progress report on the 2009/10 ALRB annual report.
- e. Records Retention Schedule – Board Counsel Wender reviewed changes to the records retentions schedule with the Board.

7. Legislation – Nothing new to report.

8. Regulations – Nothing new to report.

9. Personnel – The Board needed additional time to review a draft agency request to Department of Personnel Administration to request reclassification of one ALRB Board Counsel III position to ALRB Board Counsel IV position.

10. Roundtable –

The Making Strides Against Breast Cancer is sponsoring a Kickoff Breakfast on August 19, 2010 at CSU, Sacramento, University Ballroom from 7:30 to 8:30 a.m.

The Association of Labor Relations Agencies (ALRA) is hosting its 59th Annual Conference from July 24 to July 28, 2010, at the Fairmont Château Laurier in Ottawa, Ontario.

CIO Barbosa and ISO Massie will represent the agency at the Quarterly IT Council meeting scheduled July 27th from 10:00 a.m. – 11:30 a.m.

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

The next headquarters' staff meeting is scheduled for August 3, 2010.

The public meeting adjourned at 12:05 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.