

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 6, 2010

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

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for September 22, 2010, were approved 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** Board Member Rivera-Hernandez commented that it appears that the Legislature has reached an agreement on the budget for this fiscal year. The Board discussed a letter received on October 4, 2010, from Assembly Member, Warren Furutani. Mr. Furutani's letter requested additional information following the joint oversight hearing held on September 22, 2010, by the Assembly Committee on Labor and Employment and the Assembly Budget Committee-4. Board Counsel is preparing a response to the letter.
4. **General Counsel Report:** General Counsel Michael Lee reported that several new unfair labor practice charges had been filed since the last Board meeting. Mr. Lee also reported that on Sunday, September 26, 2010, he and staff from the Salinas Regional Office distributed makewhole checks to current and former employees from **The Hess Collection Winery** pursuant to 29 ALRB No. 6 and 35 ALRB No. 3 (2003-MMC-01). Pete Maturino, Vice-President of the United Food and Commercial Workers Union (UFCW) was also present. The distribution of checks took place at the Teamsters Hall in Vallejo, CA. Thirty-seven checks were distributed.

Sixteen individuals due monies are in Mexico. Compliance officer, Ed Blanco is in the process of establishing a process through the Mexican Consulate in Sacramento, by which the Mexican Government will assist the ALRB in distributing monies to these individuals and also in locating missing discriminatees in Mexico.

Two additional individuals been paid since the distribution on September 26, 2010, and three more will be paid this week or weekend.

The Regional Office is still investigating the whereabouts of 21 employees.

5. Executive Officer Report:

ELECTION REPORT

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

UFW filed an NA at Lamauzzi and Pantaleo on September 22, 2010.

UFW filed an NA at Anthony Vineyards on September 30, 2010.

UFW filed an NO at Four Star Fruit on September 27, 2010.

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 matter is pending the rescheduling of the hearing as soon as a State budget is reached. The parties are reviewing their schedules and will be providing the Executive Secretary with new dates to schedule the hearing. The hearing, however, will only go forward if a State budget has been reached.

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 matter is pending the Regional Director’s report on unresolved challenged ballots.

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 matter is pending the Regional Director's report on challenged ballots.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Deardorff Family Farms, 2009-CE-057-VIS

The prehearing conference scheduled for October 7, 2010, at 3:00 p.m. has been canceled. All parties were opposed to the use of video conferencing for the hearing. The parties are reviewing their schedules and will be providing the Executive Secretary with new dates to schedule the hearing. The hearing, however, will only go forward if a State budget has been reached.

HEARINGS HELD:

None.

HEARINGS TAKEN OFF CALENDAR AND PENDING RE-SCHEDULING

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

The parties are reviewing their schedules and will be providing the Executive Secretary with new dates to schedule the hearing. The hearing, however, will only go forward if a State budget has been reached.

Deardorff Family Farms, 2009-CE-057-VIS

The parties are reviewing their schedules and will be providing the Executive Secretary with new dates to schedule the hearing. The hearing, however, will only go forward if a State budget has been reached.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

CASES PENDING EXCEPTIONS OR REPLY:

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

The ALJ's decision issued August 23, 2010. The Employer filed exceptions on September 20, 2010. Reply briefs were due September 30, 2010. Neither the General Counsel nor the UFW submitted a reply brief.

CASES PENDING BOARD DECISION OR ACTION:

Temple Creek Dairy, Inc., 2009-CE-048-VIS

The ALJ's decision issued August 5, 2010. General Counsel filed exceptions to the ALJ decision on August 30, 2010. Reply briefs were filed September 13, 2010. The matter is pending before the Board for decision.

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

The ALJ's decision issued August 23, 2010. Exceptions were received on September 20, 2010. No reply briefs were filed. The matter is pending before the Board for decision.

CASES SETTLED OR RESOLVED:

The Hess Collection Winery, 07-CE-17-SAL

On September 8, 2010 the Salinas Regional Director signed off on an informal settlement agreement in The Hess Collection Winery. The agreement provides for notice remedies, backpay (\$24,600) and an acknowledgment that the two discriminatees were waiving their right to reinstatement.

The Hess Collection Winery, 29 ALRB No. 6 and 35 ALRB No. 3 (2003-MMC-01)

On Sunday, September 26, 2010, Salinas Regional Office staff distributed Hess makewhole checks to current and former employees of **The Hess Collection Winery** pursuant to 29 ALRB No. 6 and 35 ALRB No. 3 (2003-MMC-01). ALRB General Counsel Michael Lee and Eduardo Blanco also assisted. Pete Maturino, Vice-President of the UFCW was also present. The distribution took place at the Teamsters Hall in Vallejo, CA. Thirty-Seven checks were distributed. The staff was there from 12:30 to 3:00.

Sixteen individuals due monies are in Mexico. Ed Blanco is in the process of establishing a process through the Mexican Consulate of Sacramento, by which the Mexican Government will assist the ALRB in distributing monies to these individuals and also in locating missing discriminatees in Mexico.

Two additional individuals have been paid since the distribution of checks on September 26, 2010, and three more will be paid this week or weekend.

The regional office is still investigating the whereabouts of 21 employees.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

On September 24, 2010, the ALRB filed an amicus curiae letter in support of the Petition for Review in *Ralph's Grocery Company v. United Food & Commercial Workers Union Local 8*, Case No. S185544.

MISCELLANEOUS:

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures- Member Shiroma gave an update on the next steps that will be taken to finalize the case tracking system. The ALRB's Information Technology Capitol Plan (ITCP) was submitted on October 4, 2010. The next report to be submitted will be the Information Technology Strategic Plan.
- b. Policy Committee Report: Member Rivera-Hernandez reported that the committee met on October 1, 2010. She will circulate the next set of revised policies for review later this week.
- c. Compliance: Staff presented the Board with ideas to better effectuate compliance. Board Counsel Wender summarized reasons why enforcement of the bargaining makewhole remedy has been problematic throughout the history of the Agricultural Labor Relations Act (ALRA), and he presented some ideas for statutory proposals to address the short comings to the current approach to calculating makewhole. The Board made a decision to agendaize a vote at its next Board meeting on whether to suggest the amendment of Unemployment Insurance Code section 1095 to allow the use of Employment Development Department employee wage information to improve ALRB enforcement efforts.
- d. Annual Report: The annual report is being finalized.

e. Master Calendar

The Executive Secretary reported progress on reports due before the end of the calendar year. There are currently eight (8) master calendar listings, four have been resolved and four are pending.

7. Legislation – Update, if any, on pending legislation affecting the ALRB.

SB 1474, as introduced, Steinberg. Labor representatives: elections.

As introduced, this was a card check bill that was identical to SB 789, which was vetoed by the Governor in 2009. The original bill is summarized below.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

The August 2, 2010 amendments stripped the bill of all of the provisions summarized above. As amended, the bill instead would authorize the Board, under specified circumstances, to set aside an election where there has been misconduct by the employer affecting the right of the employees to vote and to certify a labor organization as the exclusive bargaining representative for a bargaining unit if the organization had previously presented the board with authorization cards signed by more than 50% of the employees in that bargaining unit. In addition, it would establish a 3-month time period for the issuance of a final Board decision in election objection cases involving a certification election.

The bill passed from committee with the author's amendments and was read a second time and was amended. The bill was re-referred to the committee on appropriations. The bill was amended on August 5 and 12. On August 16, the bill passed the Assembly and was sent to the Senate. On August 18, 2010, the bill

passed out of the labor and industrial relations committee. On August 19, 2010, the Senate concurred with the Assembly amendments and the bill was sent to enrollment. On September 2, 2010, the bill was enrolled and sent to the Governor for signature. On September 30, 2010, the Governor vetoed the bill.

8. Personnel – Nothing new to report.

9. Roundtable – The next Regional Director’s quarterly meeting will be held on October 12, 2010, at 1:30 p.m.

The public meeting adjourned at 11:30 a.m.