

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 15, 2010

Time: 10:00 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, Robinson and Wender; Analyst Massie
Others Present: Ben Ebbink, Chief Consultant, Assembly Committee on Labor and Employment

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for December 1, 2010, were approved 3-0 with minor corrections.
2. **Public Comments:** None.
3. **Acting Chairman Report:** The Board and General Counsel discussed Budget Letter 10-38 from the Department of Finance directing a significant reduction to both the ALRB operating expenses and equipment and information technology budget. The ALRB will be unable to meet the entire \$112,000 reduction requested in operating expenses and equipment (OE&E) and information technology without extraordinary reductions in critical business operations. The Board voted 3-0 to submit the proposed reduction plan.
4. **General Counsel Report: Potential Closure of ALRB El Centro Sub-Regional Office:** The Board received responses to its request for input regarding the closure of the El Centro sub-regional office from Connie L. Valenzuela, Agricultural Commissioner of Imperial County, Sandré R. Swanson, Chair of the Assembly Committee on Labor and Employment and V. Manuel Perez, Assemblymember, 80th District, Arturo Rodriguez, United Farm Workers of America, Bill Hoerger, California Rural Legal Assistance, Inc., and Rob Roy, Ventura County Agricultural Association. All responses except one indicate the office should not be closed at this

time. The Board voted 3-0 to postpone its decision regarding closure of the El Centro sub-regional office pending input from the new administration.

The regions are making significant progress in calculating the compliance liability in Ace Tomato Company and San Joaquin Growers Inc. A bilateral settlement agreement is being explored in Ace Tomato Company.

5. Executive Officer Report:

ELECTION REPORT

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

No NAs or NOs filed during this reporting period.

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 began on December 13, 2010, is in progress and is expected to conclude this Friday.

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 matter is pending before the Board for decision.

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 Regional Director's report on challenged ballots issued October 7, 2010. Exceptions to the report were received November 17, 2010. The matter is pending before the Board for decision.

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 underlying charges are under investigation.

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.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

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

None.

HEARINGS SCHEDULED

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

Prehearing conference January 18, 2011

Hearing February 10 & 11, 2011

HEARINGS IN PROGRESS

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

Scheduled December 13-17, 2010

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

Nurseryman's Exchange, Inc., 2010-RC-003-SAL

CASES SETTLED OR RESOLVED:

COMPLIANCE CASES CLOSED:

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

The Regional Director issued a closing letter on December 6, 2010, as the respondent had met all the terms and conditions of the settlement agreement. In the original complaint, the Regional Director alleged that the employer had surveilled, harassed, intimidated and discharged two employees because they engaged in protected concerted activity.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

Ace Tomato Company, Case No. C066574

On November 10, 2010, the employer filed a petition for writ of review in Ace Tomato Company, Case No. C066574. The certified record and the Board's preliminary opposition were filed November 19, 2010. On November 30, 2010, Spencer H. Hipp, attorney for petitioner, filed an application for extension of time to file any reply to ALRB's preliminary opposition. On December 8, 2010, the court, pursuant to the stipulation of the parties, dismissed the petition as withdrawn. Jurisdiction is now re-vested in the Board to pursue compliance in this case.

MISCELLANEOUS:

None.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy – The committee met with Steve Guida on December 9th regarding internal procedures and several templates developed for the administrative law judges. The next meeting will be scheduled for either December 29 or 30, 2010. The compliance portion of the tracking system has been reconfigured and will now be referred to as “remedies.”

- b. Policy Committee Report: Member Rivera-Hernandez is working on standardizing and indexing all revised personnel policies.
- c. Compliance: Member Rivera-Hernandez has been in communication with Employment Development Department Chief Deputy Director Pam Harris regarding assistance with acquiring information necessary to calculate makewhole awards in a more efficient manner. A conference call will be arranged with Steve Saxton, Chief of the Labor Market Information Division. The Board will continue discussion of ideas for achieving more effective compliance with the Agricultural Labor Relations Act (ALRA) at the next meeting.
- d. Master Calendar

The Executive Secretary reported progress on reports due.

7. Legislation – Nothing new.

8. Personnel – Nothing new.

9. Roundtable

The 22nd Annual Center for Collaborative Solutions Labor Management Conference is scheduled for March 23-24, 2011 in Anaheim, CA.

The Rescue & Restore Victims of Human Trafficking Program of the Sacramento Employment & Training Agency (SETA) will be making a presentation on Human Trafficking on Thursday, January 27, 2011, at ALRB Headquarters. The presentation will be teleconferenced to all ALRB regional offices.

The public meeting adjourned at 10:55 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.