

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 2, 2011

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Migden
General Counsel: Assistant General Counsel Blanco
Staff Present: Executive Secretary Barbosa; Board Counsel Heyck, Robinson and Wender; Analyst Massie, Administrative Law Judge Soble; and Accounting Officer Davis

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for February 16, 2011, were approved 3-0 with minor edits.
2. **Public Comments:** None.
3. **Acting Chair's Report:** There is nothing new to report regarding the 2011-12 Budget. Member Rivera-Hernandez announced that Member Shiroma was reappointed to the Board. Accounting Officer Davis reviewed the status of the current year's budget. Department of Finance is asking for a reduction of \$39,000 in our budget relating to office rent in Sacramento in addition to an Operating Expenses and Equipment reduction of \$68,000 and an Information Technology reduction of \$44,000.
4. **General Counsel Report:** General Counsel Lee is in El Centro today.
5. **Executive Officer Report:**

ELECTION REPORT

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

None.

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 post-hearing briefs are due on March 7, 2011.

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 Board issued its decision on challenged ballots on December 17, 2011. A second prehearing conference was held February 23, 2011. The parties requested and were granted a one-month continuance of the hearing to April 4-7, 2011. The parties indicated an interest in filing a motion or request with the Board to open and count the two resolved challenged ballots as the revised tally may obviate the need to have an investigative hearing on the remaining challenges set for hearing.

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 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. 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. The Executive Secretary review of the UFW's election objections is 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 matter is under investigation and the Regional Director has requested the parties' positions by March 11, 2011.

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 has granted the Employer an extension February 1, 2011 to file

a further response. The matter remains under investigation. The regional director is reviewing the submissions of the parties.

COMPLAINT REPORT

COMPLAINTS ISSUED

D'Arrigo Bros. Co. of California, 2010-CE-050-SAL

On February 24, 2011, the Salinas Regional Director issued a complaint against D'Arrigo Bros. Co. of California alleging that the employer initiated, participated in, aided, and/or gave support to the decertification campaign against the UFW.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Lassen Dairy, Inc., 07-CE-37-VI

The hearing scheduled for March 22, 2011, was taken off calendar as the parties reached a bilateral formal settlement agreement.

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

Second Prehearing Conference was held February 23, 2011
Hearing April 4-7, 2011

United Farm Workers, 2007-CL-05-SAL

Prehearing conference March 15, 2011
Hearing April 5, 2011

HEARINGS IN PROGRESS

None.

CASES PENDING ALJ/IHE DECISION:

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

Hearing held December 13-17, 2010
Post-hearing briefs due March 7, 2011

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

Prehearing conference held January 18, 2011
Hearing closed February 11, 2011
Post-hearing briefs due March 21, 2011.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

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 matter is pending before the Board for decision.

Lu-Ette Farms, Inc., 80-CE-263-EC

On February 14, 2011, the Regional Director filed a motion to make case eligible for pay out from the Agricultural Employee Relief Fund. The request for review, if any, is due March 16, 2011.

CASES SETTLED OR RESOLVED:

Lassen Dairy, Inc., 07-CE-37-VI

The hearing scheduled for March 22, 2011, was taken off calendar as the parties reached a bilateral formal settlement agreement.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

MISCELLANEOUS:

On February 11, 2011, the ALRB received a Public Records Act (PRA) request from Govantra, a Roseville business entity. The request asked for extensive administrative information for the time period from July 1, 2008 to February 4, 2011. On February 22, 2011, the Governor's Office, on behalf of all State agencies that received this request, submitted its preliminary response to Govantra. The Governor's Office denied the vast majority of the request as being so onerous that the public interest served by not disclosing clearly outweighs the public interest served by the disclosure

of documents. The Governor's Office further noted that additional exemptions may apply (e.g., personnel records). In closing, the Governor's Office informed the requestor that if it was interested in modifying its request, the office would provide it with assistance in the framing of a more focused and effective request.

6. Special Projects

- a. Information Technology Committee: The committee met with Regional Directors Alderete and Capuyan regarding the manual covering submission of compliance and remedy information to Headquarters for input into the case tracking system. Regional Director Alderete compiled a procedure with self-imposed deadlines. Consultant Guida is using this documentation to refine the manual. Consultant Guida will be meeting with Accounting Officer Davis regarding the accounting portion of the system.
- b. Policy Committee Report: Member Rivera-Hernandez will distribute a packet of six policies regarding Employee Performance Behavior and incorporating the ALRB Code of Ethics in addition to a COBRA policy.
- c. Compliance: Nothing new to report.
- d. Master Calendar

The Executive Secretary reported progress on reports due.

7. Legislation –

SB 104, as introduced, Steinberg. Labor representatives: elections.

SB 104 is a card check bill that differs only in a few respects from SB 1474, which was vetoed last year by Governor Schwarzenegger. SB 104 would amend the Agricultural Labor Relations Act (Lab. Code §§ 1140, et seq.) to (1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; (2) impose a civil penalty of up to \$20,000 for the commission of specified unfair labor practices; and (3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief. SB 104 differs from SB 1474 in several minor respects, two of which are most significant. One is the addition of a \$10,000 fine for an employer's failure to timely provide an employee list (name, address, classification, etc.) after the filing of a "majority sign-up election petition." The other is the deletion of the requirement that representation cards utilized for a majority sign-up election contain a statement that no promises or threats were made to obtain the employee's signature and the deletion of an acknowledgement that the employee is aware of the ALRB's toll free number, which may be used to complain of

coercion or other unfair labor practices. On February 10, 2011, the bill was referred to Committee on Labor & Industrial Relations and a hearing is set for March 9, 2011.

AB 1313, as introduced, Lara. Employment: agricultural workers.

Existing law requires the Agricultural Labor Relations Board to make an annual report to the Governor and the Legislature regarding specified activities it has conducted.

This bill would express the intent of the Legislature to enact legislation to require that the report be posted on the Board's Internet Web site. This bill may be heard in committee on March 22, 2010.

AB 800, as introduced, Huber. Boards and commissions: time reporting.

Existing law establishes various boards and commissions within state government. Existing law sets forth various standards and procedures that govern the amount of salary or per diem expenses that a member of a board or commission may earn or claim.

This bill would require that a member of a board or commission that meets specified requirements submit a quarterly report to the chair of the board or commission that details the time worked by the member fulfilling the duties of his or her position. This bill would also require that the chair of the board or commission submit a quarterly report to specified committees of the Legislature that contains copies of all of the time reports received by the chair. This bill may be heard in committee on March 20, 2011.

AB 1273, as introduced, Grove. Boards and commissions.

Existing law establishes various boards and commissions to carry out particular tasks, investigations, or other activities.

This bill would state that it is the intent of the Legislature to enact legislation that would codify Governor Arnold Schwarzenegger's "Governor's Reorganization Plan 1: Reforming California's Boards and Commissions" from 2004. This bill may be heard in committee on March 22, 2011.

The Board also discussed the status of possible legislation.

8. Personnel – Nothing new.

9. Roundtable

The ALRB received an award from the California State Employee Charitable Campaign for the highest amount of contributions for small agencies.

The public meeting adjourned at 11:15 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.