

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**April 20, 2011**

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

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for March 23, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Acting Chair's Report:** California Women for Agriculture is having its annual legislative reception on May 17, 2011, from 5:30 p.m. to 7:30 p.m.
- 4. General Counsel Report:** General Counsel Lee reported that 15 new charges had been filed in the ALRB regional offices since the last meeting.
- 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 employer and union filed their post-hearing briefs on March 7, 2011. The IHE is reviewing the parties' post-hearing briefs and preparing his decision.

#### **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. On March 21, 2011 South Lakes Dairy Farm and United Food & Commercial Workers (UFCW) filed a joint motion requesting that the ALRB approve the parties' stipulation to open and count two unresolved challenged, certify the election results and cancel the IHE hearing. On March 25, 2011 the Board issued an administrative order (Admin. Order No. 5) denying the joint motion. Hence, the hearing will be heard on April 4, 2011 as previously noticed. On March 29, UFCW withdrew its challenges to the eligibility of the individuals set for hearing. On March 30, 2011 the Board issued its order directing the opening and counting of five challenged ballots and directed the Executive Secretary to take the case off calendar. On April 1, 2011 the Executive Secretary took the investigative hearing off calendar. The five unresolved challenged ballots will be opened and counted on Thursday, April 7, 2011 at 2 PM and a new revised tally will issue. On April 7, 2011 the Regional Director opened and counted the resolved challenged ballots and issued an amended tally of ballots.

UFCW	24
No Union	30
Unresolved Challenged Ballots	<u>4</u>
Total	58

As the number of unresolved challenged ballots is insufficient to affect the outcome of the election, the Executive Secretary on April 11, 2011, issued a certification of results of election. This matter is now fully resolved.

**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.) The hearing on election objections is scheduled for May 19 and 20, 2011.

#### **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. 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 and the matter is now pending scheduling of an investigative hearing. 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 hearing on the consolidated complaint and election objections will be held June 13, 2011.

#### **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 has received the employer's position and is waiting for the union's position. The Regional Director's anticipates completing his investigation on challenged ballots shortly.

### **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 parties' positions have been received and are being evaluated.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

None.

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

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

Prehearing conference April 28, 2011

Hearing May 31, 2011

Counsel for the Respondent has informed the Executive Secretary that it intends to seek review of the Executive Secretary's April 18, 2011 ruling denying its motion for reconsideration.

#### **D'Arrigo Bros. of California, 2010-RD-003-SAL**

Prehearing conference May 26, 2011

Hearing June 13, 2011

## **HEARINGS IN PROGRESS**

### **United Farm Workers, 2007-CL-05-SAL**

Prehearing conference April 5, 2011

Hearing commenced April 19, 2011

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

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

Hearing held December 13-17, 2010

Post-hearing briefs filed March 7, 2011

Pending IHE Decision

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

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

Decision issued April 5, 2011

Exceptions are due 4/28/11.

Reply briefs are due 5/12/11.

## **CASES PENDING EXCEPTIONS OR REPLY:**

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

Decision issued April 5, 2011

Exceptions are due 4/28/11.

Reply briefs are due 5/12/11.

## **CASES PENDING BOARD DECISION OR ACTION:**

### **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, was due March 16, 2011. No request for review was filed. On March 30, 2011, the Board issued an order requesting additional information on the Regional Director's motion to make cases eligible for pay out and motion to close cases. On April 15, 2011, the Regional Director's filed its response to that order. Replies, if any, are due April 28, 2011.

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

On March 18, 2011, the Visalia Regional Director submitted his request for approval of a formal bilateral settlement agreement in Lassen Dairy, Inc., 07-CE-37-VI. The Board approved his request on March 30, 2011. (Admin. Order No. 2011-04)

## **CASES SETTLED OR RESOLVED:**

### **S.M.D. Vineyards, Inc., 2009-CE-004-SAL**

Regional Director closed this case on April 8, 2011 as the respondent had satisfactorily met the terms and conditions of the informal settlement agreement. On April 11, 2011 the regional director withdrew the complaint and charge.

### **Pacific Coast Mushrooms, LLC, 06-CE-1-SAL**

Regional Director closed this case on April 8, 2011 as the respondent had satisfactorily met the terms and conditions of the informal settlement agreement.

### **D'Arrigo Bros. Co. of California, 07-CE-12-SAL**

On April 11, 2011, the Regional Director withdrew the complaint and withdrew the charges.

### **Stanley Vanden Brink Dairy, 06-CE-24-VI**

On April 7, 2011, the Regional Director withdrew the complaint and closed the case as the Respondent had complied with all the terms and conditions of the informal bilateral settlement agreement.

### **Frank Pinheiro Dairy dba Pinheiro Dairy and Milanesio Fs. , 2009-CE-011-VIS**

On April 7, 2011 the Regional Director withdrew the complaint and closed the case as the Respondent had complied with all the terms and conditions of the informal bilateral settlement agreement.

### **Kirschenman Enterprises, 06-CE-78-VI**

On April 7, 2011 the Regional Director withdrew the complaint and closed the case as the Respondent had complied with all the terms and conditions of the informal bilateral settlement agreement.

### **Mayflower/Rio Blanco Dairy, 07-CE-85-VI**

On April 7, 2011 the Regional Director withdrew the complaint and closed the case as the Respondent had complied with all the terms and conditions of the informal bilateral settlement agreement.

### **Hess Collection Winery, 01-CE-08-SAL**

On April 12, 2011 the Regional Director withdrew the complaint and underlying charges as the Respondent had complied with all the terms and conditions of the 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:**

*Ralph's Grocery Company v. United Food and Commercial Workers, Local 8*, Case No. S185544: The deadline for filing amicus briefs is April 21, 2011.

**MISCELLANEOUS:**

Nothing to report.

**6. Special Projects**

- a. Information Technology Committee: Board Member Shiroma reported that the next case tracking project meeting is April 25, 2011, at 10:00 a.m. A draft manual for entering data into the system is ready for review.
- b. Policy Committee Report: Board Member Rivera-Hernandez circulated draft personnel policies on employee behavior and performance.
- c. Master Calendar: Executive Secretary Barbosa reported on various reports that are due and that have been completed.

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. On March 9, 2011, the bill passed out of committee and was re-referred to the Committee on Appropriations. The bill passed out of committee on March 17, was read a second time on March 21, and was ordered to a third reading on that date. On March 31, 2011, the bill passed to the Assembly. On April 4, 2011, it was referred to the Committee on Labor and Employment, and on April 6, 2011 it passed out of committee and was re-referred to the Appropriations Committee. On April 13, 2011, the bill passed out of committee. The bill is now pending a floor vote.

**SB 153, as introduced, Strickland. State boards and commissions: salaries: suspension.**

Existing law provides for the payment of specified salaries to the members of various state boards and commissions. A member of a state board or commission may receive a per diem salary at a specified rate, except for a member whose salary is set pursuant to certain provisions of law.

This bill would prohibit members appointed to specified state boards and commissions, *including the ALRB*, from receiving a salary for the 2012-13, 2013-14, and 2014-15 fiscal years. This bill would authorize a member of a state board or commission who is prohibited from receiving a salary under these provisions to receive a *per diem payment of \$100* during those fiscal years. This bill is essentially identical to previous bills that were introduced seven of the last eight years, none of which made it out of committee. On April 14, 2011, the bill was amended, passed from committee and re-referred to the Committee on Governmental Organization. The amendments would make the elimination of salaries permanent rather than merely suspended for three years.

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

Existing law requires the ALRB to make an annual report to the Governor and the Legislature regarding specified activities it has conducted. As introduced the bill would have required that the report be posted on the ALRB website. On March 31, 2011, the bill was referred to the Committee on Labor and Employment with amendments. On April 4, 2011, the bill was re-referred to the Committee on Labor and Employment. The March 31 amendments deleted the requirement that the report be posted on the ALRB website, and replaced it with provisions requiring that the

Board and General Counsel publish on the ALRB website, the following information about each open case:

- (a) the name of the case;
- (b) the nature of the case;
- (c) the date the case was opened
- (d) the status of the case;
- (e) the expected developments in the case; and
- (f) the anticipated timeline for resolution of the case.

**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 was referred to the Committee on Business, Professions and Consumer Protection on March 20, 2011. A hearing on the bill is set for April 26, 2011.

**8. Personnel – None.**

**9. Roundtable**

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