

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 18, 2011

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Migden
General Counsel: General Counsel Michael Lee
Staff Present: Acting Executive Secretary Soble, Board Counsel Heyck, Robinson and Wender; Analyst Massie, and Accounting Officer Davis
Others Present: Ben Ebbink, Chief Consultant, Assembly Committee on Labor and Employment

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for April 20, 2011, were approved 3-0.
- 2. Public Comments:** Nothing to report.
- 3. Acting Chair's Report:** The Governor's May Budget Revision issued on May 17, 2011. There are no changes to the ALRB budget. Mandatory sexual harassment prevention training will take place on June 8, 2011 at the ALRB Board Conference Room via a webinar for supervisors at headquarters. Regional office supervisors will participate via video conference. The Board and General Counsel decided that all ALRB non-supervisory employees will participate in sexual harassment prevention training. Accounting Officer Davis reported on the status of the current fiscal year's budget. General Counsel will discuss with the Salinas Regional Director the continued employment of the student/clerical in the Salinas Regional Office. Member Shiroma provided an update of the status of the case tracking system project under the current contract and the need for ongoing maintenance. The Board will seek authorization from the Labor and Workforce Development Agency to continue IT services.
- 4. General Counsel Report:** Since the Board's last meeting, 2 new charges have been filed. One of the counsels in the Visalia region is leaving. General Counsel will request an exemption to fill the position immediately.

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.

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.) A pre-hearing conference is scheduled for May 24, 2011. The hearing has been continued to May 31, 2011, in order to give the parties time to review and respond to the Salinas Regional Office's recalculation of peak in this matter.

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 prehearing conference is set for May 26, 2011. A hearing on the consolidated complaint and election objections is scheduled for June 13-27, 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 issued his report on challenged ballots on May 9, 2011. Exceptions, if any, are due May 19, 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 granted the Employer an extension February 1, 2011, to file a further response. The region received the additional information and the UFW requested the opportunity to respond to the information received. The Employer submitted a response on April 25, 2011.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

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

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

Prehearing conference May 24, 2011.

Hearing continued to May 31, 2011

D'Arrigo, 2010-RD-4-SAL

Prehearing conference May 26, 2011

Hearing June 13, 2011

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

Prehearing conference held April 28, 2011

Pending re-scheduling of compliance case; Prehearing conference held May 10, 2011

Rescheduled: July 19-20 (Sacramento), August 15-16 (Modesto)

HEARINGS IN PROGRESS

None.

CASES PENDING ALJ/IHE DECISION:

United Farm Workers, 2007-CL-05-SAL

Post hearing briefs due May 27, 2011. ALJ decision to follow.

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

Pending IHE Decision.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

CASES SETTLED OR RESOLVED:

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

Decision issued April 5, 2011

Exceptions are due April 28, 2011. No exceptions filed.

The ALJ decision is now final and the case is now fully resolved.

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:

Nothing new to report.

6. Special Projects

- a. Information Technology Committee: The Information Technology Committee met with the regions via teleconference on May 16 regarding tracking of remedies. The next meeting is scheduled for May 31, 2011 at 10 a.m. to discuss updates to forms and manual with the regions.
- b. Policy Committee Report: Nothing new
- c. FISMA: The last Federal Information Security Management Act (FISMA) report has been distributed. A meeting will be scheduled to review current updates.
- d. Master Calendar: The Acting 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. Following the third reading on May 16, 2011, the bill passed and was ordered to the Senate.

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.

This bill was referred to the Committee on Labor and Employment on March 31, 2011. On May 5 the bill passed from committee and was referred to the Committee on Appropriations. A hearing was set for May 18, 2011.

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. On April 26, 2011, the bill was passed from committee and referred to the Committee on appropriations. A hearing was set for May 11, 2011. The bill was referred to the Appropriations suspense file on May 11.

8. Personnel – The reclassification letter is being reviewed.

9. Roundtable

Laura Heyck graciously offered to serve as the ALRB's chair for the United State Employee's Charitable Campaign.

The regions are receiving training regarding bankruptcy practices.

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