

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 1, 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; and Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for May 18, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Acting Chair's Report:** The ALRB received direction regarding completion of the Cellular Device Reduction Saving Scheduling Worksheet for fiscal year 2011-12. Budget hearings are being held this week. The ALRB is not on the committee agenda. Pursuant to a directive from Department of General Services (DGS) regarding reducing state government footprint, the Board and General Counsel are examining the reduction of storage space. The ALRB's Disaster Recovery Plan will be reviewed and updated by July 15 to include the Office of Information Security's recommended changes. Renewal of mission critical contacts was discussed. The Board voted 3-0 to renew contracts within the Board's delegated authority threshold. Unruh Building Occupancy - DGS has renewed their inquiry as to whether the Board is interested in vacating office space in our Headquarters building. The Executive Secretary will contact DGS for further details.
- 4. General Counsel Report:** Two new charges were filed in Salinas since our last Board 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.

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, 2010. 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 was held May 16, 2011. On May 16, 2011 the Regional Director issued a dismissal of election petition. On May 17, 2011 the Investigative Hearing Examiner issued his prehearing conference order, order continuing the hearing, and order setting an additional prehearing conference to deal with remaining discovery issues. On May 17, 2011 the UFW filed its opposition to the Regional Director's decision to dismiss the petition. On May 18, 2011, the Board issued an order setting a response deadline of May 23, 2011. On May 24, 2011 a prehearing conference call was held regarding various Employer subpoenas seeking personal testimony from regional staff, followed by the issuance of an IHE order on that subject on May 25, 2011. On May 26, 2011, the Board issued a decision which held that the Regional Director had no authority at this late timeframe to issue a dismissal of election petition, but, in light of Employer's recent bankruptcy filing, continuing the hearing to Tuesday, June 22, 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 prehearing conference was held on May 27-28, 2011 and a prehearing conference order issued on May 31, 2011. A hearing on the consolidated complaint and election objections is scheduled for 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 issued his report on challenged ballots on May 9, 2011. On May 19, 2011 the employer filed exceptions to the report. The matter is pending before the Board for decision.

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. Their response is due May 16, 2011.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

D'Arrigo, 2010-RD-003-SAL

Prehearing conference May 26 & 27, 2011

Hearing June 13, 2011

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

Hearing June 22, 2011.

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

Hearing July 19, 2011

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:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Board Decision in 37 ALRB No. 1 issued May 25, 2011.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

None.

MISCELLANEOUS:

ALRB Election Closing Reports – A discussion was held regarding whether Regional Director’s should cease doing all election closing reports in light of the fact that information from those reports are now being captured in the case tracking system and all other information cannot be relied upon in either the processing of election objections or reviewing challenged ballot reports.

6. Special Projects

- a. Information Technology Committee: The committee met on Tuesday, May 31, with the regional directors and Visalia regional office staff to review the new remedy procedures. Regional staff will begin use of remedy tracking forms today. The committee will be meeting every Monday through the end of June.
- b. Policy Committee Report: Board Communications and Press Policy, Ex Parte Communications, Privacy and Workplace Searches; Bilingual Services Policy, and Internet and Technology Policies were circulated for review.
- c. FISMA Corrective Action Plan – Updates to the corrective action plan are due May 27, 2011. Updates are being processed.
- d. Sexual Harassment Prevention Training: The training for supervisors is scheduled for June 8, 2011. As soon as registration becomes available, all non-supervisory staff will be contacted with registration information.
- e. 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. 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. The bill is being held in enrollment.

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.

The May 27th amendments deleted items (d) and (e). Therefore, as amended, the bill would require the following information about each open case to be posted:

- (a) The name of the case.
- (b) The nature of the case.
- (c) The date the case was opened.
- (d) 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. The bill was read and referred to the suspense file on May 18, 2011. On May 27, the bill came off suspense, was amended to delete items (d) the status of the case and (e) the expected developments in 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. 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. On May 27, 2011, the bill came off the suspense file and was set for a second hearing but held under submission.

8. Personnel – Nothing new.

9. Roundtable

The public meeting adjourned at 11:20 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.