

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 14, 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 Robinson and Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for June 1, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Acting Chair's Report:** The Personnel Manager was informed yesterday afternoon that Sexual Harassment Prevention Training for non-supervisory personnel would be held today at 10:00 a.m. via webcast. Additional training dates will be circulated to staff as soon as we are informed of them. The public meetings for July will be held on Wednesday, July 6, and Wednesday, July 27. Business Services is working on the renewal of mission critical contracts.
- 4. General Counsel Report:** Two new charges have been filed since the last Board meeting. The search for labor contractors used by Ace Tomato Company continues.
- 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 issued his decision on June 13, 2011. Exceptions are due June 23. Reply briefs are due June 30.

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 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. On June 1, 2011, the Employer filed its request for reconsideration of the Board's Decision overruling regional director's dismissal of election petition. On June 2, 2011, the Salinas Regional Director filed its motion for reconsideration and/or amendment and/or to strike language from the Board's decision & order. Both motions were denied on June 7, 2011. Due to a scheduling conflict between both the assigned ALJ and one of the parties, the hearing previously scheduled for June 22, 2011 will be canceled and a new date has not yet been scheduled.

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 commenced on 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 investigated the challenges. 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. The matter is pending the Regional Director's report on unit clarification.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

San Joaquin Tomato Growers, 93-CE-38-VI
Hearing July 19, 2011

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

HEARINGS IN PROGRESS

D'Arrigo Bros. of California, 2010-RD-003-SAL
Hearing June 13, 2011

CASES PENDING ALJ/IHE DECISION:

United Farm Workers, 2007-CL-05-SAL
Post hearing briefs received June 9, 2011. ALJ decision to follow.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

Kawahara Nursery, Inc., 2010-RC-001-SAL
IHE Decision issued June 13, 2011.
Exceptions due June 23, 2011. Reply briefs due June 30.

CASES PENDING BOARD DECISION OR ACTION:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

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

On June 6, 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 settlement agreement.

Oasis Holsteins, 2009-CE-006-VIS

On June 10, 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.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION:

None.

MISCELLANEOUS:

6. Special Projects

- a. Information Technology Committee: The committee met yesterday. Work continues on various templates and manuals. Consultant Guida will demonstrate how the system works and the various reports available on Monday, June 20, from 10 a.m. to noon.
- 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 approved. Technical changes submitted by Personnel Manager Kojima will be incorporated.
- c. FISMA Corrective Action Plan – Accounting Officer Davis is working on the updates to the Board’s corrective action plan.
- d. Sexual Harassment Training – Training for ALRB supervisors was held on June 8, 2011. Non-supervisory training is being held today.

e. DGS Inquiry Regarding ALRB Vacant Offices: Member Shiroma informed DGS that we will work with the Treasurer's Office in their need for additional office space. Member Shiroma will coordinate with the Treasurer's Chief of Staff, Steve Coony.

f. Master Calendar

The Acting Executive Secretary reported progress on reports due.

7. Legislation – Nothing to report.

8. Personnel – Nothing new.

9. Roundtable

Member Migden volunteered to serve as ALRB vice chair on the United California State Employees Campaign.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.