

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 31, 2011

Time: 10:00 a.m.

Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden

Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and Robinson

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for August 17, 2011, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** Chairwoman Genevieve Shiroma was confirmed by the Senate on August 30, 2011.

Chairwoman Shiroma reported that the Consulate General of Mexico in Sacramento kicked-off its Labor Rights Week 2011 with a presentation on "Women in the Workplace" (Mujeres en el Trabajo) on August 29, 2011. Keynote speakers included Christine Baker, Acting Director of the Department of Industrial Relations and Rosa Moran, Administrative Director of the Division of Workers Compensation. ALRB Chairwoman Genevieve Shiroma and Executive Officer J. Antonio Barbosa attended the event. Also, as part of Labor Rights Week 2011, Executive Secretary Barbosa made a presentation on the rights of farmworkers under the ALRA at the Mexican Consulate's Office in Sacramento.

Ron Yank was also recently confirmed as Director of the Department of Personnel Administration (DPA). He urges State employees to attend the Financial Fitness Expo hosted by DPA's Savings Plus Program at the Sacramento Convention Center on October 28, 2011. The event is free. For more information see www.sppforu.com.

On August 30, 2011, the Board received comments from Scott Vogel of the Labor and Workforce Development Agency regarding the ALRB's draft Budget Change Proposal materials.

Finally, the Board welcomes and congratulates newly appointed ALRB General Counsel, Sylvia Torres-Guillén.

4. General Counsel Report: None

5. Executive Officer Report:

ELECTION REPORT

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

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's decision issued June 13, 2011. Both the UFW and the Employer filed exceptions to the decision on June 27, 2011. The reply to exceptions was filed July 7, 2011. The matter is pending decision before the Board.

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, continued 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, is canceled and has now been rescheduled for September 21 and 22, 2011.

D'Arrigo Bros. of California, 2010-RD-004-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. 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. The hearing resumed on July 11, 2011 and is still 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 Regional Director issued his report on challenged ballots on May 9, 2011. On May 19, 2011, the employer filed exceptions to the report. On August 1, 2011 the Board issued its decision on challenged ballots. On August 18, 2011, the ALRB was informed that the Company permanently closed its facility a few months ago. On August 30, 2011 the Executive Secretary scheduled this matter for hearing on September 28, 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. Their response is due May 16, 2011. The matter is pending the Regional Director’s report on unit clarification.

COMPLAINT REPORT

COMPLAINTS ISSUED

South Lakes Dairy Farms, Case No. 2009-CE-028-VIS

On August 29, 2011, the Visalia Regional Director issued an order consolidating cases and consolidated complaint in South Lakes Dairy Farms, Case No. 2009-CE-028-VIS. The complaint alleges that on July 6, 2010 the employer discharged four employees because of their concerted and union activities. A copy of the complaint is attached.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

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

Hearing: September 21 & 22, 2011.

California Florida Plant Company, 2011-RC-001-SAL

Hearing: September 28, 2011.

Deardorff Family Farms, 2009-CE-057-VIS

Hearing: October 25, 2011.

UFW (Cortez), 2008-CL-005-VIS

Prehearing Conference: November 15, 2011

Hearing: November 29, 30 and December 1, 2011.

HEARINGS IN PROGRESS

D'Arrigo, 2010-RD-004-SAL

Hearing in progress.

CASES PENDING ALJ/IHE DECISION:

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

Hearing ended August 19, 2011. The matter is pending the receipt of transcripts and the setting of the post-hearing brief due dates.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

Exceptions received June 27, 2011

Reply filed July 7, 2011

United Farm Workers (Ocegueda), 07-CL-05-SAL

Exceptions received July 21, 2011

Reply received August 31, 2011, 2011

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

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: Chairwoman Shiroma, Administrative Assistant Sakauye and Analyst Massie will meet with Consultant Steve Guida on Friday September 2, 2011, regarding the ALRB's annual report. Chairwoman Shiroma will also work with Mr. Guida on generating automatic reports for time tracking. Mr. Guida is also working on improving the search engine on the ALRB website. The required email migration questionnaire was submitted to the Office of Information Technology in a timely manner.
- b. Annual Report FY 2010/11: All edits to the annual report have been received. Sharon Massie is proofing the report and Executive Secretary Barbosa is redrafting the section on outreach. When completed, the annual report will be circulated to staff for final review.
- c. Budget: Accounting Officer Nancy Davis reported on funds left to pay for existing contracts with the companies that provide hearing translators and court reporter services. The contracts need to be amended to supplement costs for these services. The Board voted 3-0 to approve the addition of \$100,000.00 to the contract with Richard Schneider Enterprises, Inc. (translation services) and \$75,000.00 to the contract with Jackson and Associates (court reporter services).
- d. Master Calendar:

The Executive Secretary reported progress on reports due.
- e. FISMA: Board Member Rivera requested that the agency audit be placed on the agenda for the Regional Director's Quarterly Meeting on September 14, 2011.

- 7. Legislation** – According to an August 30, 2011 article in the Sacramento Bee, although the Governor remains opposed to so-called "card-check" legislation, he proposed a package of compromise measures to protect workers from grower interference. As of this meeting, no bill with these measures has been introduced yet.

AB 1313: This bill was formally amended on August 30, 2011. The August 30 amendments provide that the Board and general Counsel “may make available to the general public, as to each open case, including unfair labor practice charges, the name of the case and the date the case was opened.” The amendments deleted the requirement that the Board publish on its website the name of each open case, the nature of the case, date the case was opened and the anticipated timeline for resolution of the case.

AB 276: This bill was amended on August 18, 2011 to modify the mandatory mediation and conciliation (MMC) portions of the ALRA, and would repeal the provision specifying the conditions necessary for making an renewed demand to bargain and would instead provide that a request for MMC could be filed with the Board 180 days after any request to bargain. On August 22, 2011, the bill was re-referred to the Rules Committee.

8. Personnel – Personnel Officer, Dorothy Kojima has posted job announcements for the vacant positions in the ALRB Regional Offices.

9. Roundtable

Executive Secretary Barbosa made a presentation on the rights of farmworker rights under the ALRA at the Mexican Consulate’s Office in Sacramento on August 29, 2011.

The public meeting adjourned at 11:35 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.