

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**September 21, 2011**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden  
General Counsel: General Counsel Torres-Guillén  
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and  
Robinson; Analyst Massie, and Assistant General Counsel Blanco  
Others Present: Ben Ebbink, Chief Consultant, Assembly Committee on Labor and  
Employment

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for August 31, 2011, were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chair's Report:** Chairwoman Shiroma provided an update on budget information required by Department of Finance. Job announcements have been sent out for bilingual Field Examiners I/II/III, Office Technician (Typist)/Senior Legal Typist, and Legal Counsel/Assistant General Counsel I/II (ALRB). LWDA is assisting in acquiring administrative assistance to the ALRB.
4. **General Counsel Report:** General Counsel Torres-Guillén visited the regional offices and prioritized the existing workload. The Regional Directors provided the Board with their status reports at the Regional Director's meeting of September 14, 2011.
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'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, 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, 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. The investigative hearing began on September 21 and is scheduled to end September 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 closed on September 7, 2011. The matter is pending the receipt of transcripts and the filing of post-hearing briefs.

**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. This matter is 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 Regional Director has contacted the parties regarding available dates for hearing.

## **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.

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

### **HEARINGS IN PROGRESS**

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

Hearing: September 21 & 22, 2011

### **HEARINGS SCHEDULED**

#### **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

**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.

**D'Arrigo, 2010-RD-004-SAL**

Hearing ended September 7, 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

**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:

None.

### 6. Special Projects

- a. Information Technology Committee: Consultant Guida has finished work on the online subpoena form. He continues to work on refinement of the case management system and further customization of the website legal search engine.
- b. Annual Report FY 2010/11: Proofing of the report has been completed by Analyst Massie. Executive Secretary Barbosa has received additional information regarding the outreach activity occurring last year. The report will now be finalized and circulated for review.
- c. Financial Integrity and State Managers Accountability Act (FISMA)—Member Rivera and Accounting Officer Davis attended a FISMA meeting on September 14<sup>th</sup>. Member Rivera and Scott Vogel from LWDA will meet with Department of Finance on September 22, 2011, to obtain specific guidance on the FISMA requirements for small agencies.
- d. Master Calendar: The Executive Secretary reported progress on reports due.

**7. Legislation – Senate Bill 126 (Steinberg) Agricultural Labor Relations.** This bill would provide that if the board refuses to certify an election regarding certification of a labor organization because of employer misconduct that, in addition to affecting the results of the election, would render slight the chances of a new election reflecting the free and fair choice of employees, the labor union shall be certified as the exclusive bargaining representative for the bargaining unit. The bill was enrolled and sent to the Governor for signature on September 16, 2011.

**8. Personnel –** As reported by the Chair and General Counsel, the ALRB posted job opportunity announcements for the positions of Legal Counsel/Assistant General Counsel I/II, Field Examiner I and Office Technician/Senior Legal Typist. Further information is available at [www.alrb.ca.gov](http://www.alrb.ca.gov).

### 9. Roundtable

Ron Barsamian, a private practice attorney specializing in agricultural labor relations, contacted the Executive Secretary office and requested a participant for a panel discussion on the ALRA that he is hosting as part of the annual Agricultural Personnel Management Association. The association is meeting on February 2, 2011, and would like someone who is conversant with the work of the Executive Secretary and Board. Lawrence Alderete has agreed to be part of the panel and Mr. Barsamian is planning on contacting Sylvia Torres-Guillén regarding her availability. Both General Counsel

Torres-Guillén and Member Rivera agreed to represent the agency at the conference. The conference is geared to human relation employees.

Assistant General Counsel Blanco reported the ALRB participated in a health fair outreach event in Fresno and plans to participate in a health fair outreach event in Stockton in mid-October.

The public meeting adjourned at 11:25 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**