

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 5, 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 Heyck and Robinson,
and Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for September 21, 2011, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** There have been two meetings with Labor and Workforce Development Agency since the last Board meeting. The hiring freeze has not been lifted, thus agencies can only borrow staff or hire retired annuitants to fill vacancies at this time. The next LWDA meeting will discuss legislation signed by the Governor that will impact LWDA agencies. Chairwoman Shiroma spoke with George Soares (title, firm?) about scheduling a meet and greet in Sacramento for grower representatives to meet recently appointed General Counsel Torres-Guillén and Chairwoman Shiroma. Similar meetings are being scheduled with labor organizations. The Board and General Counsel will be visiting the Visalia Regional Office on October 11 and 12, 2011. There will be a reception with stakeholders the evening of October 11th at the Visalia Regional Office
4. **General Counsel Report:** General Counsel Torres-Guillén has a meeting with representatives from California Rural Legal Assistance. Ms. Torres-Guillén has conducted several interviews for regional office vacancies. The General Counsel is working with the regional offices on expediting movement of cases.

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. The investigative hearing was held September 21 and 22, 2011. The transcripts have now been received and the Executive Secretary will be issuing an order setting the due date for the post-hearing briefs.

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. The investigative hearing opened on September 28, 2011, and closed prematurely due to the unavailability of a witness. The case is being rescheduled and the hearing will be completed.

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 is contacting the parties regarding available dates for hearing.

Eckhart Seed Company, 2011-RC-002-SAL

On September 26, 2011, the General Teamsters Warehousemen & Helpers Union, Local 890, filed a representation petition with the ALRB Salinas Regional Office seeking to organize the agricultural employees of Eckhart Seed Company. The employer is a seed company involved in the production of beans, peas, lettuce, cauliflower and broccoli seeds. The employer has operations in Salinas and Greenfield and employs approximately eight agricultural workers. An election was held on February 3, 2011, in Salinas with the following results:

Teamsters Local 890	9
No Union	0
Unresolved Challenged Ballots	<u>1</u>
Total	10

The number of unresolved challenged ballots is insufficient to affect the outcome of the election and a majority of the valid ballots case has been cast for Teamsters Local 890. Election objections, if any, are due within five (5) days (October 10, 2011).

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

Deardorff Family Farms, 2009-CE-057-VIS

Hearing: October 25, 2011

Whether agricultural employee Horacio Ortiz was refused rehire because he allegedly was involved in protected concerted activity.

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

Prehearing Conference: November 15, 2011

Hearing: November 29, 30 and December 1, 2011

Whether the collective bargaining representative UFW breached its duty of fair representation by allegedly failing to properly represent unit employee Florentina Cortez concerning an incident involving a fight between two unit employees both represented by the same union UFW.

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

The hearing needs to be rescheduled. The Executive Secretaries is contacting the parties regarding available dates to resume the hearing.

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.

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

Hearing ended September 23, 2011. The transcripts have been received and the Executive Secretary will be issuing an order setting the due date for the filing of the post-hearing brief.

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 (Jose 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:

Nothing new to report.

6. Special Projects

- a. Information Technology Committee: Chairwoman Shiroma and Analyst Massie met with the Labor Agency on October 4, 2011, regarding LWDA's efforts to comply with AB 2408 (server room consolidation). The next meeting with Steve Guida will be scheduled towards the end of October.
- b. Regulations – Nothing new to report.
- c. Annual Report FY 2010/11: The annual report has been circulated to the Board and General Counsel for review. The document will be finalized at the October 26th meeting.

d. FISMA—Board Member Rivera-Hernandez and Accounting Officer Nancy Davis met with representatives from the Department of Finance to receive guidance as to what should be included in the FISMA report. The draft report is completed. Changes to report will be made based on progress achieved. The report will be circulated for approval closer to the final submission date in December.

e. Master Calendar

The Executive Secretary reported on the progress on reports due.

7. Legislation – Potential ideas are due to the Labor and Workforce Agency by October 27, 2011.

8. Personnel – The Board congratulated Marvin Brenner of the Visalia Regional Office on his retirement effective December 31, 2011, after approximately 34 years of service with the ALRB. .

9. Roundtable

California State Employees Charitable Campaign forms are now due.

The public meeting adjourned at 11:50 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.