

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 27, 2011

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden
General Counsel: General Counsel Torres-Guillen
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and Robinson
Others Present: April Kleine, LWDA; Tiffany Wong, Wine Institute; Dave Puglia, Western Growers Association; Paul Kronenberg, Family Winemakers of California

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for October 5, 2011, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** Chairwoman Shiroma welcomed members of the public in attendance. Ms. Shiroma also reported on the Board Members' recent visits to the Visalia and Salinas regional offices. In both locations, Members visited growing and harvesting operations, and attended receptions for constituents and stakeholders in both regions. Ms. Shiroma reported that the Board assisted the General Counsel in completing the Budget Change Proposal (BCP) for next fiscal year.
- 4. General Counsel Report:** General Counsel Torres-Guillen reported that the BCP had been submitted to the Department of Finance, and that the ALRB had received approval for additional staff in the regional offices, including the El Centro sub-regional office. Ms. Torres-Guillen also reported on recent activity in the regional offices.
- 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, 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 post-hearing briefs are due November 15, 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 post-hearing briefs are due December 19, 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. 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 scheduled to reconvene on November 2, 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. On October 12, 2011 the Regional Director requested that the union's unit clarification petition or amendment of certification be set for hearing. On October 13, 2011 the Executive Secretary granted that request and set the matter for hearing for October 26, 2011. The hearing open and closed on October 26, 2011. The matter is pending the receipt of transcripts.

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, were due October 10, 2011. As no objections to the election were filed, the Executive Secretary issued a certification of representative on October 12, 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

The October 25, 2011 hearing was taken off calendar and the complaint withdrawn as the Employer and Charging Party reached a private party settlement.

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

The hearing is scheduled to reconvene on November 2, 2011.

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

Prehearing Conference: November 15, 2011.

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

The issue is 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.

CASES PENDING ALJ/IHE DECISION

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

Hearing ended September 23, 2011. The post-hearing briefs are due December 19, 2011.

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

Hearing ended August 19, 2011. Post-hearing briefs were initially due November 7, 2011. On October 21, the Executive Secretary granted the Respondent's request for a 30 day extension of time to file post hearing briefs. Neither the UFW nor the General Counsel opposed the request. Briefs are now due December 7, 2011.

D'Arrigo, 2010-RD-004-SAL

Hearing ended September 7, 2011. The post-hearing briefs are due December 19, 2011.

Sun World, 2010-UC-1-VIS

Hearing opened and closed October 26, 2011. The matter is pending the receipt of a single transcript and the setting of the post hearing brief due date.

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:

Deardorff Family Farms, 2009-CE-057-VIS

The October 25, 2011 hearing was taken off calendar and the complaint withdrawn as the Employer and Charging Party reached a private party settlement.

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.

6. Special Projects

- a. Information Technology Committee: Chairwoman Shiroma reported that the ALRB is on track to migrate to a new email system by the first quarter of 2012. Ms. Shiroma reported that LWDA employee, April Kleine will be helping Administrative Assistant Sakauye enter data into the case tracking system. The next meeting with Steve Guida will be sometime in November.

- b. Annual Report FY 2010/11: Chairwoman Shiroma is making a few additional edits to the report.
- c. FISMA: Board Member Rivera-Hernandez reported that progress is being made on the FISMA report.
- d. Master Calendar

The Executive Secretary reported on the progress on reports due.

7. Regulations to implement Senate Bill 126: Board Counsel Wender reviewed the projected timeline for the rulemaking process:

- November 1, 2011—Notice, Proposed Regulations, and supporting documents submitted to the Office of Administrative Law (OAL) for publication in Notice Register
- November 11, 2011—Publication in Notice Register
- December 28, 2011—Deadline for public comment
- January 4, 2012—Adoption by ALRB if no changes made to original proposals (a new 15-day comment period is required if changes are made)
- January 5, 2012—Submission of regulations to OAL for review
- February 17, 2012—Deadline for OAL approval (30 working days)
- March 18, 2012—Effective date of new regulations

Board Counsel Wender also reported on the text of the regulations package and explained how the proposed text relates to the provisions of SB 126. The regulation package will be posted on the ALRB website and mailed to the constituent mailing list.

Board Member Rivera-Hernandez moved to initiate the rulemaking process, Board Member Midgen seconded the motion. The Board voted 3-0 to initiate the rulemaking process.

- 8. Legislation** – The Labor and Workforce Development Agency (LWDA) is requesting all 2011 legislative proposals to be submitted by October 27, 2011.
- 9. Personnel** – Regional Attorney Marv Brenner will be retiring on October 31, 2011. The Board Members and the General Counsel thanked him for his many years of service to the ALRB.

10. Roundtable

Analyst Massie will be attending the CES Email Program: Deployment Data Exchange Workshop at Franchise Tax Board on October 27, 2011, from 9 a.m. to 4 p.m.

On October 28, 2011, Ms. Massie will be attending the IT Security Awareness Fair.

On October 31, 2011, Ms. Massie will attend a meeting from 10:00 a.m. to 12:00 p.m. at EDD with Craig Law and Gary Leong regarding alternatives to comply with AB 2408 (server consolidation).

The public meeting adjourned at 11:00 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.