

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 2, 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, ALJ Soble; and Analyst Massie
Others Present: Bryan Little, Director of Labor Affairs, California Farm Bureau
Federation

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for October 27, 2011, were approved 3-0.
- 2. Public Comments:** Bryan Little of the California Farm Bureau thanked the Board for the opportunity to sit in on their meeting. Mr. Little indicated his organization would be filing comments to the proposed regulations implementing Senate Bill No. 126.
- 3. Chair's Report:** The Chair attended the Labor and Workforce Development Agency (LWDA) meeting. The Employment Development Department (EDD) in cooperation with the California Department of Veterans Affairs will be hosting job fairs and events throughout California this month focusing on veterans. Chairwoman Shiroma, Member Rivera-Hernandez and General Counsel Torres-Guillén attended a meet and greet with grower representatives at the offices of Kahn, Soares and Conway. The representatives had several questions about the SB 126 regulatory process.
- 4. General Counsel's Report:** The Chair reported that General Counsel Torres-Guillén is in Salinas conducting interviews. A permanent clerical has been hired for the Salinas Regional Office.
- 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, 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 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 opened and closed on October 26, 2011. The matter is pending the receipt of transcripts.

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

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: December 6, 2011

Hearing: December 13, 14 and 15, 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.

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

Sun World International, Inc., 01-CE-613-EC(R)

Regional Director's Motion to Make Cases Eligible for Payout from AERF and Motion to Close Cases dated October 26, 2011

CASES SETTLED OR RESOLVED:

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

The Board's decision issued on November 1, 2011. The petition for writ of review, if any, is due December 1, 2011.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION

LAW:

None.

COURT LITIGATION:

None.

MISCELLANEOUS:

None.

6. Special Projects

- a. Information Technology Committee: The committee will meet on November 14, 2011, at 9 a.m. to brief General Counsel Torres-Guillén on the case management system. On November 28th the committee will meet to review all fields in the case tracking system. Staff continues to work with the Office of Technology and EDD on transitioning the ARLB email system to the state system. Email, server and telephone connections will be lost on Thursday, November 10, from 6 a.m. to 7:30 a.m. as equipment is moved to a new rack system installed by the State Treasurer's Office.
- b. Annual Report FY 2010/11: The Chair's edits have been distributed. Responses are due by close of business Friday.
- c. Financial Integrity and State Managers Accountability Act (FISMA) Report – Nothing new to report.
- d. Master Calendar

The Executive Secretary reported on the progress on reports due.

7. **Regulations Implementing Senate Bill No. 126** – The Executive Secretary has created a regulation email list for sending out updates on regulations implementing SB 126. Board Counsel Wender reported the proposed regulations, notice and supporting documents were submitted to the Office of Administrative Law on Monday, October 31, 2011. The documents have been mailed and emailed to interested parties. The regulation package can be found on the ALRB website at www.alrb.ca.gov. Mr. Wender reviewed a tentative timeline for the rulemaking process:

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

8. Legislation – *Update, if any, on pending legislation affecting the ALRB.*
Nothing to report.

9. Personnel –Chairwoman Shiroma, Executive Secretary Barbosa and Personnel Officer Kojima will be attending a joint SPB/DPA meeting on Wednesday, November 2, 2011, at 1:30 p.m. to discuss proposed changes to the attorney classifications with departments. Elena Atengco will start work on November 14, 2011, as the new secretary for the Salinas Regional Office.

10. Roundtable

California's Political Reform Act (Gov. Code §§ 81000 to 91015) includes lobbying provisions in sections 86100-86300 and 85702. Lobbying can take the form of oral comments, written submissions, and other conduct. Administrative Law Judge Mark Soble will be sending an email with information on the rules governing lobbying.

The 9th Annual Farmworker Women's Health, Safety and the Environment Conference will be held on Friday, November 4, 2011, at the Visalia Convention Center from 7:30 a.m. to 4:00 p.m. ALRB representatives will be available to answer questions and offer outreach materials to attendees.

The public meeting adjourned at 11:05 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.