

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 16, 2011

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Migden (by telephone)
General Counsel: General Counsel Torres-Guillén
Staff Present: Acting Executive Secretary Soble, Board Counsel Wender, Heyck and Robinson, Analyst Massie, and Accounting Officer Davis

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for November 2, 2011, were approved 3-0.
2. **Public Comments:** None.
3. **Chair's Report:** Accounting Officer Davis presented a budget update. General Counsel Torres-Guillén and Chairwoman Shiroma continue to meet weekly with administrative staff to review assignments. The Chairwoman, General Counsel, and Karen Wong, Staff Services Manager III, participated in a conference call with the Department of Industrial Relations regarding their development of an outreach program. The General Counsel, Chairwoman and Karen Wong will be meeting with the United Farm Workers (UFW) staff on November 18, 2011, in Fresno to discuss suggestions for effective outreach to farm workers.
4. **General Counsel Report:** General Counsel Torres-Guillén has been conducting interviews for field examiners and attorneys in the regions. Interviews will continue next week in the hope of filling vacancies in December. The General Counsel will ask the National Labor Relations Board (NLRB) to assist with training and staffing. A retired annuitant attorney has been hired in El Centro to assist for a few more months, and a permanent clerical has been hired in Salinas. Ms. Torres-Guillén is striving to close the oldest outstanding cases. She has completed case reviews in the Salinas Regional Office and continues with her review of cases in the Visalia Regional Office. New procedures for filing and processing cases are being put in

place and will come into effect as new cases are filed. The affected parties were informed of the changes.

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 post-hearing briefs are due November 17, 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 hearing resumed and closed on November 2, 2011. The matter is pending the receipt of transcripts and the filing of post-hearing briefs.

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 post-hearing briefs are due December 8, 2011.

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

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

The post-hearing briefs due November 17, 2011.

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

The post-hearing briefs due December 7, 2011.

Sun World, 2010-UC-1-VIS

The post-hearing briefs due December 8, 2011.

D'Arrigo, 2010-RD-004-SAL

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.

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

The hearing ended November 2, 2011. The matter is pending receipt of the transcripts and filing of post-hearing briefs.

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

Responses were due November 10, 2011

CASES SETTLED OR RESOLVED:

Tony P. Cardoza Dairy, 2011-CE-005-VIS

On October 26, 2011, the parties reached a bilateral informal settlement agreement in the above case. According to the complaint, the alleged discriminatee complained that he had been issued a disciplinary notice and terminated due his participation in protected concerted activity. The agreement provides for backpay and notice remedies and contains a non-admission clause. The disciplinary and termination notices issued to the alleged discriminatee have been expunged from his personnel file.

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 to report.

6. Special Projects

- a. Information Technology Committee: The committee met on November 14th and provided an overview for the General Counsel on the case management system. April Kleine, Analyst, will be assisting Allison Sakauye, Executive Assistant, with the case management system. A meeting has been set for November 28th from 10 a.m. to noon to discuss each module in the case management system to determine if all necessary data is being captured. Analyst Massie continues working with the CES Migration Team on the statewide email consolidation project.
- b. Annual Report FY 2010/11: A further revised annual report was distributed to the Board and General Counsel on November 9, 2011. Additional revisions have been made. The latest revisions will be distributed next week.
- c. Financial Integrity and State Managers Accountability Act (FISMA) Report – Chairwoman Shiroma will review the revised report.

d. Master Calendar

The Acting Executive Secretary reported on the progress on reports due.

7. **Regulations Implementing Senate Bill No. 126** – Executive Secretary has created a regulation email list for sending out updates on regulations implementing SB 126. The Notice was published on November 11, 2011. No public comment has been received so far. The request for hearing deadline is December 13th. The deadline for comments is December 28, 2011.
8. **Legislation** – *Update, if any, on pending legislation affecting the ALRB*—Nothing to report.
9. **Personnel** – Member Rivera-Hernandez has contacted two law schools regarding extern positions for the Office of the Executive Secretary. Ms. Rivera-Hernandez requested qualifications and skill requirements from the Executive Secretary. Eugene Cardenas is retiring on November 30, 2011, after serving the ALRB for slightly more than 29 years. The General Counsel and Board thank Mr. Cardenas for his service and congratulate him on his retirement.
10. **Roundtable** – The next Labor Agency meeting will be held at 11 a.m. on Tuesday, November 22, 2011.

California's Political Reform Act (Government Code sections 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 public meeting adjourned at 11:10 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.