

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

January 11, 2012

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Members Rivera-Hernandez and Mason
General Counsel: General Counsel Torres-Guillén
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and Robinson
Others Present: Bill Thomas, Best, Best & Krieger; Paul Kronenberg, President, Family Winemakers of California

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for December 21, 2011, were approved 2-0 with one member abstaining.
- 2. Public Comments:** None.
- 3. Chairwoman's Report:** Genevieve Shiroma welcomed new Board Member, Bert Mason. The Governor has released his proposed budget for the next fiscal year. In the proposal, the ALRB's budget remains intact and has a modest increase. Accounting Officer Davis has informed Chairwoman Shiroma and General Counsel Torres-Guillén that the ALRB expenditures for this fiscal year are on track with projections. Chairwoman Shiroma attended the meeting of department heads at the Labor and Workforce Development Agency (LWDA). She reported on several appointments: Mark Woo Sam has been appointed General Counsel of LWDA; Pam Harris has been appointed director of the Employment Development Department (EDD); and Christine Baker has been appointed director of the Department of Industrial Relations (DIR).
- 4. General Counsel Report:** General Counsel Torres-Guillén reported that the training for newly hired attorneys which was held in Sacramento last week went very well. She reported that there are four outstanding ULP complaints which are being prepared to be brought to hearing. She stated that the General Counsel will be filing exceptions to the recent ALJ decision in San Joaquin Tomato Growers, 93-CE-38-VI. Regional staff are also preparing two motions to close cases. Chairwoman Shiroma and

General Counsel Torres-Guillén plan to speak with NLRB staff to discuss opportunities for cross training and possible ways to collaborate on education and outreach.

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. On November 22, 2011 the Board issued its decision on challenged ballots (37 ALRB No. 4). The UFW

filed a request for reconsideration on December 5, 2011. The employer filed its response to the motion on December 13, 2011. On December 21, 2011 the Board issued its order denying the motion for reconsideration. The opening and counting of the resolved challenged ballots is scheduled for Friday, January 13, 2012. Screening of the petitioner's election objections will follow, if necessary.

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 (Administrative 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 were received November 21, 2011. The IHE issued his decision on election objections on December 19, 2011. Exceptions were due January 3, 2012 and reply briefs January 13, 2012. On December 20, 2011 the UFW requested a four-week extension of time to January 31, 2012 to file exceptions to the IHE's decision. The Executive Secretary granted the union's request. Exceptions are now due January 31, 2012. Replies are due February 10, 2012.

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 January 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 post-hearing briefs were due December 22, 2011. On December 20, 2011 the UFW requested a three-week extension of time to file its post-hearing brief. The Executive Secretary granted the union's request and the post-hearing briefs are now due January 12, 2012.

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 were due January 20, 2012. On December 19, 2011 the UFW requested a three-week extension of time to file its post-hearings brief. The Executive Secretary granted the union's request and the post-hearing briefs are now due on February 10, 2012.

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

San Joaquin Tomato Growers, Inc., 2011-MMC-001
January 31, 2012.

CASES PENDING ALJ/IHE DECISION

California Florida Plant Company, 2011-RC-001-SAL
The post-hearing briefs are due January 12, 2012.

D'Arrigo, 2010-RD-004-SAL
The post-hearing briefs are due January 19, 2011.

Sun World, 2010-UC-1-VIS
The post-hearing briefs are due February 10, 2012.

ALJ/IHE DECISIONS ISSUED:

Nurserymen's Exchange, Inc., 2010-RC-003-SAL
IHE Decision issued December 19, 2011

San Joaquin Tomato Growers, 93-CE-38-VI
ALJ Decision issued January 10, 2012

CASES PENDING EXCEPTIONS OR REPLY:

Nurserymen's Exchange, Inc., 2010-RC-003-SAL
Exceptions are due January 31, 2012
Reply briefs are due February 10, 2012

San Joaquin Tomato Growers, 93-CE-38-VI
Exceptions are due February 2, 2012
Reply briefs are due February 16, 2012

CASES PENDING BOARD DECISION OR ACTION:

George Arakelian Farms, Inc., 78-CE-11-E

The General Counsel's Motion to Make Cases Eligible for Payout from AERF and Motion to Close Cases was re-served on the parties on January 6, 2012. Responses to the motion are due January 20, 2012.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

San Joaquin Tomato Growers, 2011-MMC-001

Board issued its decision on the UFW's request for referral to mandatory mediation and conciliation on December 23, 2011. (37 ALRB No. 5)

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

San Joaquin Tomato Growers, Inc., 2011-MMC-001

On November 17, 2011 the UFW filed a declaration requesting mandatory mediation and conciliation. On November 22, 2011 the employer filed its answer and opposition to the motion. On December 2, 2011 the Board issued an order to show cause why it should not dismiss the union's request for failure to show that the parties have not previously had a binding contract between them. The union's response was filed December 13, 2011. The employer's reply was filed December 21, 2011. On December 23, 2011 the Board issued its decision ordering an evidentiary hearing to determine if the Union's request for referral to MMC met all the statutory prerequisites. On December 27, 2011 the Executive Secretary scheduled an evidentiary hearing to be held on January 31, 2012 in Modesto CA.

COURT LITIGATION:

None.

MISCELLANEOUS:

Nothing to report.

6. Special Projects

- a. Information Technology Committee: Chairwoman Shiroma reported that Analyst Massie is attending a meeting on email migration. Consultant Steve Guida is working on a program for case docketing.
- b. Financial Integrity and State Managers Accountability Act (FISMA) Report: The ALRB's FISMA report was submitted to the Department of Finance on December 30, 2011. According to FISMA Audit memo No. 11-02, if a department has not addressed all the risks identified in its 2011 FISMA report, the department must submit a Corrective Action Plan (CAP) to the Department of Finance by January 31, 2012 in which the unaddressed risks are discussed and scheduled for mitigation.
- c. Education and Outreach: Chairwoman Shiroma and General Counsel Torres-Guillén reported that they had met with staff at the Labor Occupational Health Program (LHOP) at the University of California, Berkeley. LOHP is same organization that worked on DIR's heat stress education effort several years ago. The purpose of Chairwoman Shiroma's and General Counsel Torres-Guillén's meeting was to determine whether LHOP can provide assistance to improve the ALRB's education and outreach materials. The ALRB will participate in the Labor Education Task Force. Also, the ALRB has been invited to participate at the Grape and Tree Fruit League's briefing session and reception on February 7 and 8, 2012.
- d. Master Calendar:

The Executive Secretary reported on the progress on reports due.

- 7. Regulations Implementing Senate Bill No. 126** – On December 12, 2011 the United Farm Workers of America filed its request for a public hearing concerning the proposed regulatory amendments to Title 8, sections 20363, 20365, 20393, 20400, and 20402. On December 22, 2012 the UFW filed its public comment to the Board's proposed 2011 regulatory package. No other comment was received by the December 28, 2011 deadline. Pursuant to that request, the Board has scheduled a public hearing to take place on January 20, 2012, beginning at 10:00 a.m., at the Employment Development Department Auditorium, 722 Capitol Mall, 1st Floor, Sacramento, CA. At the hearing, the Board will accept both oral and written comments. The hearing will be recorded and a Spanish language interpreter will be available. After the hearing ends, the Board will consider all public comment, written and oral, and decide whether to make any changes to the proposed amendments. A Board vote on adopting the amendments may take place at the end of the hearing or at a later scheduled Board meeting.

Board Counsel Wender reminded the Board that the proposed Rulemaking Calendar for 2012 is due to the Office of Administrative Law (OAL) by January 30, 2012. Mr. Wender will prepare the Rulemaking Calendar and will circulate for Board review.

8. **Legislation** – Update, if any, on pending legislation affecting the ALRB: Nothing to report.
9. **Personnel** – General Counsel Torres-Guillén reported that Visalia Regional Director, Lawrence Alderete will be retiring at the end of January 2012. Ed Blanco will be acting Regional Director in Visalia after Mr. Alderete retires. Chairwoman Shiroma and General Counsel Torres-Guillén are working with Accounting Officer Nancy Davis, who is also retiring in the early part of 2012, to release a job announcement for a new accounting officer.
10. **Roundtable** –
Nothing to report.

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