

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 7, 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, Administrative Law Judge Soble,
Board Counsel Wender, Heyck and Robinson; Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for February 15, 2012, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chair's Report:** The ALRB received a Spirit of California award from the California State Employees Charitable Campaign. Chairwoman Shiroma, General Counsel Torres-Guillén, and Acting Executive Secretary Soble met with 25 delegates from China regarding working conditions and rights afforded farm workers in California. On February 23, 2012, a regulatory briefing session was held with the California Grape and Tree Fruit League. The Labor and Workforce Development Agency senior management meeting was held on March 6, 2012. There will be a hearing this afternoon at 1:30 p.m. before Assembly Budget Subcommittee No. 4 on State Administration regarding General Counsel's request for staff augmentation for the unfair labor practices workload.
- 4. General Counsel Report:** General Counsel Torres-Guillén reviewed the status of cases in the regions. The General Counsel announced the hiring of three new attorneys. The Oxnard subregional ALRB office will be reopened the beginning of April 2012 with Jessica Arciniega staffing the office. The location of the new office has not been finalized. Silas Shawver and Cristina Pena will be assigned to the Visalia Regional Office. The new attorneys will report to Sacramento for training from March 26-29th. Debra Kircher, a graduate student, has been hired to assist the General Counsel and Administration staff in Sacramento. The General Counsel will

be conducting election training in Salinas on March 15 and 16, 2012. Various stakeholders have been invited to participate in the training.

5. Executive Officer Report:

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):

PENDING ELECTION MATTERS:

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 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 to the IHE's decision were filed January 31, 2012. Reply briefs were filed February 10, 2012. On February 28, 2012 the Board issued its decision affirming the Investigative Hearing Examiner's conclusion to set aside the election because the Employer was not at 50% of peak employment during the pre-petition payroll period. See *Nurserymen's Exchange, Inc.* (February 28, 2012) 38 ALRB No. 1. This matter is now fully resolved and will be removed from this report.

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 were filed January 23, 2011 and the matter is pending the Investigative Hearing Examiner's decision.

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 filed on January 12, 2012. The Investigative Hearing Examiner's decision in California Florida Plant Company, 2011-RC-001-SAL, issued on February 8, 2012. Exceptions were due February 24, 2012. As neither party filed exceptions to the IHE decision, the Executive Secretary issued an order making the decision final on March 5, 2012. The matter is pending the opening and counting of the five resolved challenged ballots, the issuance of a final tally of ballots and, if necessary, the screening of the employer's election objections. The opening of the ballots is now scheduled to take place on Tuesday, March 13, 2012, at 2:00 p.m.

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. Both the UFW and Employer filed their post-hearing briefs. On February 28, 2012, the IHE issued his decision on the UFW's unit clarification petition. Exceptions are due March 12, 2012. Reply briefs, if any, are due March 22, 2012.

COMPLAINT REPORT

COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

HEARINGS IN PROGRESS

None.

HEARINGS SCHEDULED

H&R Gunland Ranches, Inc., 2009-CE-063-VIS, et al.

Pre-hearing conference March 26, 2012

Hearing May 1, 2012

TO BE SCHEDULED

South Lakes Dairy Farms, 2009-CE-028-VIS

Pre-hearing conference March 26, 2012

Hearing June 4-14, 2012

Bayou Vista Dairy, 06-CE-09-VI

Pre-hearing conference June 1, 2012

Hearing July 7-20, 2012

CASES PENDING ALJ/IHE DECISION

D'Arrigo, 2010-RD-004-SAL

The matter is pending the IHE's decision

ALJ/IHE DECISIONS ISSUED:

Sun World, 2010-UC-1-VIS

The IHE issued his decision in Sun World, 2010-UC-1-VIS, on February 28, 2012. Exceptions are due March 12, 2012. Reply briefs are due March 22, 2012.

CASES PENDING EXCEPTIONS OR REPLY/REQUEST FOR REVIEW:

Sun World, 2010-UC-1-VIS

Exceptions are due March 12, 2012
Reply briefs are due March 22, 2012

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

Exceptions were received March 5, 2012
Reply briefs are due April 20, 2012

CASES PENDING BOARD DECISION OR ACTION:

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

Exceptions were received March 5, 2012
Reply briefs are due April 20, 2012

CASES SETTLED OR RESOLVED:

United Farm Workers, 2008-CL-005-VIS

On February 23, 2012, the General Counsel approved a bilateral settlement agreement in United Farm Workers, Case No. 2008-CL-005-VIS. The complaint alleged that 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. The agreement provides standard notice remedies (signing, posting and reading of the notice to employees) and a non-admission clause.

COMPLIANCE CASES CLOSED:

Kawano, Inc., 76-CE-51-R

Motion to Close Cases and Make Cases Eligible for Payout from AERF.
The Board granted the General Counsel's motion on March 6, 2012

Temple Creek Dairy, Inc., Case No. 2009-CE-048-VIS

The request for review of the closing letter in Temple Creek Dairy, Inc., Case No. 2009-CE-048-VIS, et al., is due March 8, 2012. No request has been received yet.

CASES TRANSFERRED TO BOARD FOR DECISION:

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

Exceptions were received March 5, 2012

Reply briefs are due April 20, 2012

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

The ALJ issued his decision on March 6, 2012.

Exceptions are due March 19, 2012.

Reply briefs are not provided for in the Board's regulations.

BOARD DECISIONS:

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

On February 28, 2012, the Board issued its decision in this matter affirming the Investigative Hearing Examiner's conclusion to set aside the election because the Employer was not at 50 percent of peak employment during the pre-petition payroll period. See Nurserymen's Exchange, Inc. (February 28, 2012) 38 ALRB No. 1.

Kawano, Inc., 76-CE-51-R

The Board granted the General Counsel's motion to close cases and make cases eligible for payout from AERF on March 6, 2012.

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. On January 18, 2012 the Executive Secretary's granted the Union's request to move the hearing to February 8, 2012. On January 25, 2012, the UFW filed a request for ruling on the

pleadings. On January 26, 2012, the employer filed its opposition to that request. On January 27, 2012 the Board denied the UFW's request. The hearing on the MMC matter was held on February 8, 2012. Post-hearing briefs were received February 23, 2012. The ALJ issued his decision on March 6, 2012. Exceptions are due March 19, 2012. Reply briefs are not provided for in the Board's regulations.

COURT LITIGATION:

None.

MISCELLANEOUS:

Nothing to report.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System—Nothing new to report.
- b. Website: Presentation on Google Analytics—Analyst Massie demonstrated the information available using the state-sponsored Google Analytics model.
- c. Education/Outreach: General Counsel Torres-Guillén reviewed the revised proposed interagency contract from UC Berkeley. Ms. Torres-Guillén will attend a worker education event in Stockton tonight. Supervising Attorney Alegría De La Cruz met with the indigenous community on March 6, 2012.
- d. Master Calendar: The Executive Secretary reported on the progress on reports due.
- e. Election Manual: A subcommittee consisting of Delia Martinez, Eduardo Blanco and Joseph Wender was appointed to update the election manual.

7. Regulations:

- a. Regulations Implementing Senate Bill No. 126 – Pending approval by the Office of Administrative Law. Nothing new to report.
- b. Rulemaking 2012 – (1) The NLRB standards for electronic filing were reviewed. Board Counsel Wender will draft options. All Board Counsel will work together on the next regulation package. (2) A proposal from the General Counsel that specifies attachments, such as transcript excerpts, not be counted in page limits for briefs will be presented at a later date.

8. Legislation – *Update, if any, on pending legislation affecting the ALRB*

AB 2676, as introduced, Committee on Labor and Employment. Unemployment insurance: use of information.

Under existing law, the information obtained in the administration of the Unemployment Insurance Law is for the exclusive use and information of the Director of Employment Development in the discharge of his or her duties and is not open to the public. However, existing law requires the director to permit the use of the specified information for specified purposes, and allows the director to require reimbursement for direct costs incurred. Existing law provides that a person who knowingly accesses, uses, or discloses this confidential information without authorization is guilty of a misdemeanor.

This bill would require the director to provide the Agricultural Labor Relations Board with information for use in the investigation or enforcement of the Alatorre-Zenovich-Dunlap-Berman Agricultural Labor Relations Act. By providing this information to the Agricultural Labor Relations Board, this bill would expand the crime related to the unauthorized disclosure of this information, and impose a state-mandated local program.

This bill was introduced on March 5, 2012, and may be heard by the Committee on Labor and Employment on April 5, 2012

- 9. Personnel** – An Interagency Agreement has been entered into with Employment Development Department to perform all accounting functions for the ALRB. The contract runs through September 2012. We have not received any applications for the Board's extern position. The hiring of a full-time Business Services Officer will be the next priority. Given the lack of suitable applicants for the Board's part-time clerical position, the Board decided to pursue a student to assist the Board.

10. Roundtable –

The Statement of Economic Interests (Form 700) annual filing is due April 2, 2012. The ALRB is requesting that all designated employees file their disclosure statements one week before that final deadline, namely on or before Monday, March 26, 2012.

Cathryn Rivera-Hernandez has been invited to speak at the Western Growers Association luncheon on Wednesday, March 14, 2012.

The status of cases eligible for Agricultural Employee Relief Fund distributions was discussed.

The public meeting adjourned at 12:15 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.