

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 4, 2009

Time: 10:55 a.m.*
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary Barbosa, ALJ Soble and Analyst Massie
Others: Sharon Runner; Freddie Sanchez, UFCW Local 101; John Ulrich, UFCW Local 101; Tim Hamann, UFCW Local 5; Cristina Munoz, UFCW Local 101; Curtis Notsinneh, Consultant to Assemblymember Jerry Hill's Office

OPEN SESSION

**Due to an emergency evacuation of the building, the commencement of the Board meeting was delayed.*

- 1. Approval of Minutes:** The Board minutes for February 18, 2009, and March 3, 2009, were approved 3-0.
- 2. Public Comments:** John Ulrich of UFCW Local 101 invited the Board and General Counsel to the Instituto Laboral de la Raza 2009 Labor Awards Dinner on Friday, April 10, 2009, at the Hilton Hotel, 333 O'Farrell Street, San Francisco. The new Chair of the National Labor Relations Board is expected to attend. Tim Hamann was recently named Secretary-Treasurer of UFCW Local 101.
- 3. Chairman Report:** Chairman Almaraz welcomed incoming Board Member Sharon Runner. He reported that the Labor and Workforce Development Agency's monthly senior staff meeting had been cancelled. Chairman Almaraz, Member Rivera-Hernandez and Assistant General Counsel Blanco attended the California Farm Bureau reception last week. The Association of Labor Relations Agency's Annual Conference will be held July 18-22, 2009 in Oakland, CA. Chairman Almaraz will be making opening remarks at the Center for Collaborative Solutions Labor Management Conference (March 18-20, 2009) in Anaheim, California, as well as participating on

the panel for the Labor Relations Update: Private Sector session. Assistant General Counsel Blanco will be participating on the panel for the Unfair Labor Practice in the Private Sector session.

- 4. General Counsel Report:** General Counsel Lee reported that he met with UFW members at Headquarters who expressed concerns regarding a pending case. Mr. Lee also met with Employer Attorney Daniel Berkeley regarding a pending matter. During the last fiscal year ALRB has received a tremendous number of charges. Staffs in the regional offices have done an excellent job in resolving pending as well as new charges.

5. Executive Officer Report:

ELECTION REPORT:

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

None.

PENDING ELECTION MATTERS:

Gallo Vineyards, Inc., 07-RD-1-SAL

On June 18, Roberto Parra filed a decertification petition seeking to remove the United Farm Workers of America as the exclusive bargaining representative of Gallo's agricultural employees in Sonoma County. The petition lists the approximate number of employees in the unit as 400. The election was held on June 25, 2007 and yielded the following results:

UFW	95
No union	125
Unresolved Challenged Ballots	<u>12</u>
Total	232

On July 2, 2007 the UFW filed objections to the election. The objections were held in abeyance pending resolution of ULP's mirroring the election objections. On October 5, 2007 the Regional Director dismissed three of four overlapping charges (07-CE-23-SAL, 07-CE-25-SAL and 07-CE-26-SAL). On October 18, 2007, the UFW filed a request for review of the three charges. On November 16, 2008, the General Counsel affirmed the Regional Director's dismissal of the three charges. On February 5, 2008 the Salinas Regional Director and Employer reached an informal settlement agreement resolving the allegations of the remaining charge, 07-CE-24-SAL. The UFW filed a request for review of the agreement. The request for review was denied by the General Counsel on March 10, 2008. On June 6, 2008, the Executive Secretary issued his order on election objections in Gallo Vineyards, Inc.,

07-RD-1-SAL setting one objection for hearing and dismissing the rest. The UFW filed a request for review of the partial dismissal. The Board's issued its decision on November 7, 2008 affirming the Executive Secretary's order dismissing the election objections. The UFW filed a motion for reconsideration of the Board's decision. The General Counsel intervened in the proceeding and filed a response to the motion. On January 7, 2009 the Board denied the UFW's motion for reconsideration. The hearing on the sole objection was held November 11, 2008. Post-hearing briefs were filed February 2, 2009. The IHE decision is issuing today. Exceptions are due. Replies are due.

Lassen Dairy dba Meritage Dairy, 07-RC-4-VI

On September 4, 2007 UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Lassen Dairy dba Meritage Dairy. The employer is a dairy located in Bakersfield with approximately 25 employees. An election was held on September 11, 2007 with the following results:

UFCW	17
No Union	15
Unresolved Challenged Ballots	<u>6</u>
Total	38

As the unresolved challenged ballots were outcome determinative, the Regional Director investigated the challenges and issued his report on challenged ballots on November 9, 2007. The Employer filed exceptions to that report on November 19, 2007. The Board issued its decision on challenged ballots on February 15, 2008. A hearing on the three (3) challenged ballots was held on March 18, 2008. On April 22, 2008 the Investigative Hearing Examiner (IHE) issued his decision in this matter. No exceptions were filed and the Executive Secretary issued his order making the IHE decision final on May 12, 2008. On May 13, 2008 the Regional Director opened and counted the three challenged ballots and issued an amended tally with the following results:

UFCW	17
No Union	18
Unresolved Challenged Ballots	<u>2</u>
Total	37

Since the two remaining challenged ballots are outcome determinative and are dependent on the processing of ULP charges involving the two affected workers, the Executive Secretary has requested that the investigation of charges pertaining to Juan Alberto Tostado and Jose Antonio Barbosa Tostado be expedited. On October 28, 2008 the Visalia Regional Director issued a complaint in this matter. A hearing on the related ulps is scheduled for March 24, 25 and 26, 2009.

L.E. Cooke Company, 08-RD-001-VIS

Agricultural employee Fabian Betanzos filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent representative, UFW, at L.E. Cooke Company. The employer is a bare tree nursery in Visalia with approximately 136 employees. An election was held on April 9, 2008 with the following results:

UFW	53
No Union	57
UCB's	<u>12</u>
Total	122

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. On June 2, 2008, the Visalia Regional Director issued his report on challenged ballots in LE Cooke Company. Of the 12 challenges lodged, the Regional Director recommended that 9 challenges be overruled and the ballots opened and counted and that 3 ballots be held in abeyance to be set for hearing should the ballots be outcome determinative after a revised tally of ballots issues. No request for review was filed; therefore the ES issued an order making the report final on June 24, 2008 and directing the RD to issue an amended or final tally, as appropriate. On June 30, 2008, the Regional Director opened and counted nine (9) challenged ballots and issued a final tally:

UFW	53
No Union	66
UCB's	<u>3</u>
Total	122

The three remaining unresolved challenged ballots are insufficient to affect the outcome of the election. On November 13, 2008 the Executive Secretary issued his order on election objections setting one objection for hearing and dismissing the rest. The UFW filed its request for review November 24, 2008. On January 21, 2009 the Board issued its decision affirming the Executive Secretary's partial dismissal of objections. An investigative hearing previously scheduled for March 3, 2009 has now been continued to March 16 and 17, 2009.

Vista Vineyard Management, LLC, 2008-RD-001-SAL

Agricultural employee Cecilio Samario filed a decertification petition with the Visalia Regional Office on June 11, 2008 seeking to decertify the incumbent representative, UFW, at Vista Vineyard Management, LLC. The employer is a wine grape grower in St. Helena with approximately 65 employees. The election was held on June 18, 2008. The Regional Director impounded the ballots due to pending related unfair labor practice charges. On June 25, 2008, the UFW filed objections to the election. On July 1, 2008 the Acting Executive Secretary issued his order holding the election

objections in abeyance pending investigation of six (6) related unfair labor practice charges. On January 16, 2009, the Regional Director issued a partial dismissal on one charge and a full dismissal of the remaining five (5) charges. The UFW's request for review was received February 9, 2009. The matter is pending review of dismissal by the General Counsel.

HerbThyme Farm, 2008-RC-006-VIS

On October 30, 2008 Laborers International Union of North America, Local 1184, filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Herb Thyme Farm. The employer is a grower of various herbs (mint, oregano, cilantro...etc.) with approximately 90 employees. The pre-election conference was held on November 4, 2008. An election was held on November 6, 2008 in Thermal CA and yielded the following results:

Laborers International Union of North America, Local 1184	67
No Union	11
Unresolved Challenged Ballots	16
Total	94

On November 14, 2008 the Employer filed a single election objection concerning the appropriateness of the unit. The investigative hearing was held February 9, 2009. The matter is pending receipt of transcripts and issuance of the investigative hearing examiner's decision.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Four hearings are currently scheduled

Mushroom Farms, 07-CE-60-EC

Prehearing held February 5, 2009

Hearing March 10 & 11, 2009

LE Cooke Co., 08-RD-001-VIS

Hearing scheduled March 16 & 17, 2009

Lassen Dairy dba Meritage Dairy, 07-CE-37-VI

Prehearing held March 3, 2009

Hearing March 24, 25 and 26, 2009

Mushroom Farms, 07-CE-34-SAL
Prehearing March 26, 2009
Hearing April 14, 2009

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI
Hearing was held December 2 & 3, 2008. Post-hearing briefs were filed January 23, 2009. The matter is pending decision by the administrative law judge.

ALJ/IHE DECISIONS ISSUED:

Gallo Vineyards, Inc., 07-RD-1-SAL
Decision issued March 4, 2009

CASES PENDING EXCEPTIONS OR REPLY:

Gallo Vineyards, Inc., 07-RD-1-SAL
Decision issued March 4, 2009
Exceptions are due
Replies are due

CASES PENDING BOARD DECISION OR ACTION:

Woolf Farming Co. of CA, 06-CE-28-VI
Exceptions filed January 2, 2009
Reply received January 15, 2009

Hess Collection Winery, Case No. 2003-MMC-01 (29 ALRB No. 6)
General Counsel's Request for Advice on Jurisdiction Briefs on novel issues arising from the General Counsel's request for advice in this matter were due on March 2, 2009 with replies due March 12, 2009. On March 2, 2009, prior to receiving briefs from any parties, the Board became aware that the Salinas regional office had not been served with a copy of the Board's order (Administrative Order 2009-03 dated February 9, 2009) requesting briefing in this matter. On March 2, 2009, the Executive Secretary requested that the parties not file their briefs until further notice. On March 2, 2009, the Board issued an order requesting that the Salinas Regional Director submit a declaration to the Board as to whether he or anyone in the Salinas Regional Office received actual service of the Board's order and whether or not he or any other staff in the Salinas regional office had knowledge of the order.

CASES SETTLED OR RESOLVED:

Kirschenman Enterprises, 06-CE-78-VI

On February 13, 2009 the Visalia Regional Director approved an informal settlement agreement between the employer, Kirschenman Enterprises, and the Charging Party, UFW.

Perez Farm Labor Contracting, 2009-CE-012-VIS

On February 23, 2009 the Regional Director for the Visalia Regional Office approved an informal settlement agreement between Perez Farm Labor Contracting and Charging Party Reyna Garcia. The employer provided a check in the amount of \$1754.44 in settlement of all claims raised by the charge and offered reinstatement to two employees.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION

Vincent B. Zaninovich & Sons, Case No. F055640 (34 ALRB No. 3)

Petition for writ of review was filed July 15, 2008. The certified record was filed July 24, 2008. The petitioner's opening brief was filed August 28, 2008. The Board's response brief was filed October 2, 2008. The UFW's response brief was filed October 3, 2008. The petitioner's reply brief was filed November 12, 2008. The matter is now fully briefed and is pending decision by the court or the setting of oral argument.

6. Special Projects

- a. Information Technology Update/Case Tracking System—Member Shiroma provided a review of the project. The committee met on February 27, 2009, to review the current status of the project. Laura Camero of the Visalia Regional Office is participating in all meetings. Work continues on inconsistencies in the numbering systems. We continue to develop additional reports. Steve Guida is continuing work on achieving ADA

compliance on the website. He is working on new features for the site. The next meeting is scheduled for March 12 at 10:00 a.m. General Counsel Lee and Member Shiroma attended the Labor and Workforce Development Agency IT Capital Plan Strategic Planning committee meeting. The committee is on track to complete the project by June 2009.

- b. Financial Integrity and State Managers Accountability Act (FISMA)—Member Rivera-Hernandez reviewed the FISMA project. Personnel Officer Kojima is in the process of reviewing the latest section.

7. **Legislation:**

SB 789 (Steinberg)—Labor Representatives: Elections

This bill is identical to SB 180, which passed the Legislature in 2007 but was vetoed by the Governor. The bill would amend the Agricultural Labor Relations Act (Labor Code sec. 1140, et seq.) to 1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; 2) create penalties for willful or repeated commission of specified unfair labor practices; and 3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief.

AB 579 (Huber)—State Boards and Commissions; Annual Salaries

This bill would delete the existing salary provisions pertaining to specified boards and commissions, including the ALRB, and substitute a salary setting mechanism based on an audit by the State Auditor. Specifically, the bill would require the State Auditor, beginning January 1 of each even-numbered year, to audit the workload of each state board and commission and to make a finding regarding the workload of that state board or commission and the number of hours necessary for each board member or commissioner to work to fulfill his or her duties. The State Auditor would be required to complete these audits by September 1 of each even-numbered year. The bill would also require the Governor, by January 1 of each even-numbered year, to establish by executive order the annual salaries of all board members and commissioners based on the workload audits and associated findings of the state auditor. The bill would prohibit an affected board member or commissioner from being compensated for his or her service in the next year, beyond payment of per diem and reimbursement of travel and attendance costs made according to law, if the State Auditor fails to conduct the audit or if the Governor fails to establish by executive order their annual salaries.

8. **Personnel:** Executive Secretary Barbosa requested approval of the extension and revision of the contract with the Foundations of California Community Colleges for student interns clarifying that the contract includes student interns working

both in the regional office as well as Headquarters (Sacramento). The Board voted 3-0 to approve the contract.

9. **Roundtable:** The LWDA Chief Counsel Meeting will be held Monday, March 9.

The public meeting adjourned at 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.