

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 24, 2009

Time: 1:36 p.m.
Members Present: Chairman Almaraz, Members Runner and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary Barbosa, ALJ Soble & Analyst Massie
Others: Daniel Rounds, Principal Consultant, Senate Office of Research
Absent: Member Shiroma

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for March 4, 2009 were approved 2-0 with Member Runner abstaining.
2. **Public Comments:** None.
3. **Chairman Report:** Chairman Almaraz reported on the Center for Collaborative Solutions 20th Annual Labor Management Conference in which he and Assistant General Counsel Blanco participated as panelists. Both NLRB and labor lawyers expressed appreciation of the ALRA. Member Rivera-Hernandez attended the annual Western Growers Association reception.
4. **General Counsel Report:** General Counsel Lee reported that since the last meeting six new unfair labor practice charges have been filed. He observed that we are receiving charges at a much more normal pace as compared to last year's above-average pace. General Counsel Lee and Member Rivera-Hernandez reported on the LWDA IT strategic planning meeting held on March 24th.
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 issued March 4, 2009. On March 16, 2009, the Executive Secretary granted the Employer's request for an extension of time to file exceptions to the Investigative Hearing Examiner's decision. Exceptions are now due April 20, 2009. Replies are due May 1, 2009.

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 in progress. The hearing is scheduled 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. The investigative hearing previously scheduled for March 16, 2009 was taken off calendar as the UFW withdrew its objection to the election. Also on March 16, 2009, the Executive Secretary issued a certification of results of election as the "No Union" choice received a majority of the valid ballots cast and all objections filed by the UFW were either dismissed or withdrawn. This case will be removed from the election report as the matter is now fully resolved.

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. On March 17, 2009, the General Counsel issued his ruling on request for review and affirmed the dismissal of all charges. The matter is now before the Regional Director pending an order to set aside the impoundment and proceed with the opening and counting of the ballots.

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. On March 17, 2009 the IHE issued his decision overruling the Employer’s objection on the appropriateness of the unit and recommending that the results of the election be certified and that a certification of representative issue. Exceptions are due March 30, 2009. Reply briefs are due April 9, 2009.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

One hearing is scheduled:

Mushroom Farms, 07-CE-34-SAL

Prehearing held March 26, 2009

Hearing set for April 14, 2009

HEARINGS HELD:

Mushroom Farms, 07-CE-60-EC

Hearing held March 10 and 11, 2009

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

Hearing began on March 24 and is in progress

CASES PENDING ALJ/IHE DECISION:

Mushroom Farms, 07-CE-60-EC

Hearing held March 10 & 11, 2009
Pending receipt of transcripts and post-hearing briefs

ALJ/IHE DECISIONS ISSUED:

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

Investigative Hearing Examiner decision issued March 4, 2009

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI

ALJ decision issued March 16, 2009

HerbThyme Farms, Inc., 2008-RC-006-VIS

Investigative Hearing Examiner decision issued March 17, 2009

CASES PENDING EXCEPTIONS OR REPLY:

HerbThyme Farms, Inc., 2008-RC-006-VIS

Decision issued March 17, 2009

Exceptions are due March 30, 2009

Replies are due April 9, 2009

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI

Decision issued March 16, 2009

Exceptions are due April 9, 2009

Replies are due April 23, 2009

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

Decision issued March 4, 2009

Exceptions are due April 20, 2009

Replies are due May 1, 2009

CASES PENDING BOARD DECISION OR ACTION:

Hess Collection Winery, Case No. 2003-MMC-01 (29 ALRB No. 6)

Opening briefs on novel issue were file by Employer and Petitioner on March 11 and 12, 2009 respectively. Reply briefs are due March 23, 2009. No briefs were received by fax though the parties could still mail their briefs postmarked March 23, 2009 and be timely.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Woolf Farming Co. of CA, 06-CE-28-VI

Board decision 35 ALRB No. 2 issued March 10, 2009

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.

Woolf Farming Co. of CA, 06-CE-28-VI

Petition for writ of review is due April 9, 2009

6. Special Projects

- a. Information Technology Update/Case Tracking System—The committee met yesterday with Consultant Steve Guida to review progress. Refinements have been made to the time tracking system. The revised English PDF forms are now available online. As soon as the forms are translated into Spanish, they will be uploaded to the website. In the meantime, the English/Spanish forms continue to be available online. Analyst Massie and Consultant Stephen Wicklund met with EDD staff on March 19, 2009, regarding the LWDA Technical Reference Model.
- b. Financial Integrity and State Managers Accountability Act (FISMA)—Member Rivera-Hernandez will provide the Board with new and revised personnel policies for discussion at the next board meeting. Member Rivera-Hernandez and Counsel Wender will continue to draft and review additional personnel policies to facilitate the approval process.

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. The bill was assigned to the Labor and Industrial Relations Committee on March 19 and is set for hearing on April 22.

AB 783 (Anderson)—State Government: agencies, commissions, boards: repeal.

This bill would require that all statutorily created state agencies, boards, and state commissions that are funded by General Fund revenues, except for the Franchise Tax Board, be repealed on January 1, 2022, unless a later enacted statute, that is enacted before January 1, 2022, deleted or extends that date. The bill was referred to the Committee on Business and Professions on March 23.

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. **Regulations:** Nothing new.
9. **Personnel:** Ryan Reese has accepted the position of business services officer and will start on April 1, 2009.
10. **Roundtable:**

The Instituto Laboral de la Raza 2009 Labor Awards Dinner will be held on Friday, April 10, 2009, at the Hilton Hotel, 333 O'Farrell Street, San Francisco.

Member Sharon Runner was welcomed to her first official board meeting.

La Raza Lawyers of Sacramento and the Women Lawyers of Sacramento are co-hosting a luncheon to honor the late Cesar Chavez featuring David Villarino and Liz "Chavez" Villarino, daughter of Cesar Chavez. The luncheon is on March 26, 2009 at the Firehouse Restaurant in Sacramento at noon.

The public meeting adjourned at 2:30 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.