

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 3, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: Michael Lee
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Heyck, Wender and Robinson; Analyst Massie; and
Student Assistant Ichikawa

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for January 20, 2010 were approved 3-0.
2. **Public Comments:** None.
3. **Chair Report:** The Workforce Cap Reduction Plan required in Executive Order S-01-10 and Budget Letter 10-03 was submitted to the Labor and Workforce Development Agency on January 28, 2010. The Board voted 3-0 to delegate to the Executive Secretary the duty to submit the management representation letter on behalf of the Board.
4. **General Counsel Report:** Pursuant to a new lease agreement, renovations in the Salinas Regional Office will be completed with six months.
5. **Executive Officer Report:**

ELECTION REPORT:

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

None.

PENDING ELECTION MATTERS:

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 Tostado be expedited. On October 28, 2008 the Visalia Regional Director issued a complaint in this matter. A hearing on the related ULP's was held March 24 and 25, 2009. Post-hearing briefs were received May 8, 2009. On June 1, 2009 the ALJ issued his decision in this matter. Both the employer and charging party filed exceptions to the ALJ decision on June 24, 2009. Reply to exceptions briefs were filed July 7, 2009. On October 28, 2009 the Board issued its decision on the companion ULP matter. On November 30, 2009 the employer filed a petition for writ of review with the 5th DCA. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent ALRB's brief is due February 16, 2010.

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 will be investigated by the Salinas Regional Office. The UFW filed objections to the election on January 26, 2010. The matter is pending the Regional Director's report on unresolved challenged ballots and the Executive Secretary order on election objections

Sonoma Cutrer Vineyards, 2010-RC-002-SAL

On January 21, 2010, the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of Sonoma Cutrer Vineyards. The employer is a vineyards company located in Windsor with 55 employees. On January 25, 2010, the Salinas Regional Director dismissed the UFW petition as the regional director's investigation indicated that the number of agricultural employees presently employed by the vineyards is less than fifty percent of the employer's peak agricultural employment for the current calendar year, a required threshold to hold the election. The UFW did not seek review of this decision and the matter is now fully resolved and will be removed from this report.

COMPLAINT REPORT

COMPLAINTS ISSUED

Lassen Dairy, Inc., 07-CE-65-VI

On January 21, 2010, the Visalia Regional Director issued a complaint against Lassen Dairy, Inc. alleging that the employer discharged two workers because they assisted and/or supported a labor organization or engaged in other protected concerted activities.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

None.

No hearings are in progress.

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

HerbThyme Farms, Inc., 2008-CE-074-VIS

Ace Tomato Company, Inc., 93-CE-37-VI

San Joaquin Tomato Growers, Inc., 93-CE-38-VI (20 ALRB No. 13)

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02

CASES SETTLED OR RESOLVED:

Mushroom Farms, 07-CE-34-SAL

The Board decision issued December 16, 2009. The petition for writ of review was due January 15, 2010. None was filed. This matter is now fully resolved. No compliance is warranted as the Board affirmed the dismissal of the complaint.

S.M.D. Vineyards, Inc., 2009-CE-004-SAL

The case was taken off calendar as the parties reached an informal settlement agreement. The case had been set for hearing for February 23, 2010.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02
Request for mandatory mediation and conciliation was received on September 10, 2009. On September 11, 2009 the petitioner filed a supplemental memorandum and declaration in support. On September 15, 2009 the Executive Secretary granted the Employer's request for an extension of time to file an answer to the petition. The answer to the petition was received September 23, 2009. On October 1, 2009 the

Board issued its decision finding that the prerequisites for mandatory mediation and conciliation were met and referred the matter to the State Mediation and Conciliation Service (SMCS) for mandatory mediation and conciliation. On October 5, 2009 the SMCS provided the parties with a list of nine (9) mediators. In accordance with our regulations, the parties had seven (7) days to select a mediator from the list or mutually designate a mediator from a list of all qualified mediators maintained by the State. (See Regulations section 20403.) On October 8, 2009 Frank Pinheiro Dairy filed a petition for writ of review and request for immediate stay with the 5th DCA. On October 9, 2009 the court granted the immediate stay. On October 16, 2009 the ALRB filed the certified record and its preliminary opposition. Also on October 16, Frank Pinheiro Dairy filed its opening brief. Real Party in Interest filed its response brief on October 19, 2009. On October 30, 2009, the court issued an order dissolving the stay of the MMC process provided for in its previous order. The October 30, 2009 order also granted petitioner leave to file a reply within 10 days (November 9, 2009). On November 3, 2009 the Board filed a request for remand with the 5th DCA in order to consider arguments presented by the petitioner for the first time in its petition for writ of review. On November 5 and 6, 2009, respectively, the Employer filed its reply to opposition to petition for writ of review and notice of non-opposition to ALRB's request for remand. On November 13, the Court issued an order requesting clarification of the parties' intentions by letter briefing. The parties filed letter briefs with the court on November 20, 2009 (Respondent and Charging Party) and November 23, 2009 (Petitioner). On December 28, 2009 the court summarily denied the petition for writ of review. The petition for hearing is due January 7, 2010. No petition was filed with the Supreme Court. The MMC hearing before the mediator began on January 6, 2010. On January 21, 2010, the Board issued an order staying the mandatory mediation process pending reconsideration by the Board of its decision and order in 35 ALRB No. 5.

COURT LITIGATION

Bryan DeHaan and Jacob DeHaan v. California Agricultural Labor Relations Board, et al., 2009-NC-09-232146

On March 27, 2009 *Bryan DeHaan and Jacob DeHaan* filed a complaint in the Superior Court of Tulare County, Visalia Division, Case No. 09-232146 (VCGCB Claim No. G578040). against the *Agricultural Labor Relations Board, et al* alleging that that ALRB agents falsely imprisoned the DeHaans, two minors, in the process of taking their challenged ballot declarations at a representation election conducted by the ALRB on April 23, 2008 at Heritage Dairy in Tulare, CA. The answer to the complaint was filed June 22, 2009. The deposition of an ALRB staff member and DeHann children were taken on September 1, 2009. The trial is scheduled for April 15, 2010.

Lassen Dairy, Inc., F058940

On November 30, 2009 Lassen Dairy, Inc. filed a petition for writ of review of the Board's decision in (2009) 35 ALRB No. 7. The certified record was filed with the February 3, 2010 Board Meeting Minutes

court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent's answering brief is due February 16, 2010.

Gallo Vineyards, Inc. (Roberto Parra), C063487

On November 24, 2009 Roberto Parra, the Real Party of Interest in Gallo Vineyards, Inc., filed a petition for writ of review of the Board's decision in (2009) 35 ALRB No. 6. The certified record was filed with the court on December 10, 2009. Petitioner's opening brief was filed January 29, 2010. ALRB's response brief is due March 5, 2010.

6. Special Projects

- a. Information Technology Update/Case Tracking System—The committee met on February 2, 2010 regarding Board, ALJ and regional office templates. Student Assistant Ichikawa will begin reviewing and confirming data. Consultant Guida is continuing his work with Accounting Officer Davis to refine the accounting portion of the case tracking system. Consultant Guida is also working with Business Services Officer Reese on inventory tracking. The next committee meeting is scheduled for Friday, February 26, 2010, at 10:00 a.m. to continue the discussion on legal templates. There will also be a meeting on February 17, 2010, at 10:00 a.m. to review progress on the trust fund and verification project.
- b. Policy Committee Report— Compensation Policies, Probationary and Performance Evaluation Policies & Special Appointment Policies—Policies and procedure approvals are requested by Wednesday, February 10.
- c. Financial Integrity and State Managers Accountability Act (FISMA) - – Corrective Action Plan – The Corrective Action Plan is being re-circulated to the Board and General Counsel for their review. All changes have been incorporated. When approved, the plan will be sent to the Labor Agency for their review.

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

SB 835, as introduced, Strickland. Government reorganization:

realignment or closure. This bill would enact the Bureaucracy Realignment and Closure Act of 2011. It would establish the Bureaucracy Realignment and Closure Commission in state government with a specified membership. Beginning on January 1, 2011, the Controller, the Director of Finance, the Legislative Analyst, the Legislative Counsel, the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, and the State Auditor would be required to develop recommendations for the closure or realignment of state bureaucracies for consideration by the commission. It would require the commission to independently evaluate the recommendations, conduct 3 public hearings, and, by January 1, 2012, have at least one member of the commission

visit each state bureaucracy considered for realignment or closure. This bill would require the commission, not later than July 15, 2012, to submit a report of its final recommendations to the Governor and the Legislature that establishes a list of state bureaucracies that are proposed to be realigned or abolished. It would require the Governor, upon approval of the list of recommendations, to prepare the list as a reorganization plan and to submit the plan to the Legislature under the provisions relating to the Governor's reorganization plans. This bill was introduced, read, sent to print and to the Rules Committee for assignment on January 4, 2010. On January 21, 2010, this bill was sent to the Committee on Governmental Organization.

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, deletes or extends that date. The bill was referred to the Committee on Business and Professions on March 23. On January 31, 2010, the bill died pursuant to Article IV, Section 10(c) of the Constitution.

AB 1501 (V. Manuel Perez). Boards and commissions: salaries full time.

This bill would require the salary of a board member, as defined, that is set by statute to be based on the board member serving full time and would require, if a board member does not work full time in any given month, to prorate the salary of that board member to the actual hours worked while serving as a board member. The bill would exclude from these requirements a board member who is paid a salary on or after January 1, 2010, of less than \$100,000. The bill would require the Department of Personnel Administration to adopt regulations for determining which activities constitute service as a board member and the minimum number of hours required to deem a board member to be serving full time, which would be prohibited from being less than 160 hours per month. On April 2 the bill was referred to the Committee on Business and Professions. On April 21 a hearing was set but canceled at the request of the author. The bill passed from committee on April 29 and was re-referred to the Committee on Appropriations. On May 28 the bill was held under submission. On January 31, 2010, the bill died pursuant to Article IV, Section 10(c) of the Constitution.

SB 685 (Strickland). State boards and commissions: salaries: suspension.

This bill would prohibit members appointed to specified state boards and commissions from receiving a salary for the 2010-11, 2011-12, and 2012-13 fiscal years. This bill would authorize a member of a state board or commission who is prohibited from receiving a salary under these provisions to receive a specified per diem payment during those fiscal years. On March 19, this bill was referred to the Committee on Governmental Organization. On March 27, the bill was set for

hearing April 28. On April 13 the bill was amended and re-referred to the Committee on Governmental Organization. The bill failed passage in committee on April 28. Reconsideration was granted. On February 1, 2010, the bill was returned to Secretary of the Senate pursuant to Joint Rule 56.

8. Regulations – After consideration of public comment received on the 15-day notice of revision of proposal to clarify the discovery regulation regarding exculpatory evidence, the Board voted 3-0 to approve the regulatory change. The amendment will be filed with the Office of Administrative Law

9. Personnel – Nothing new to report

10. Roundtable –

The Instituto Laboral de la Raza is hosting its 2010 National Labor Awards on February 12, 2010 in San Francisco.

The Farm Bureau invited Board Members and General Counsel to a Legislative Reception on Tuesday, March 2, 2010 between 6-8 p.m. at the Citizen Hotel.

A conference call was held on February 1 with members of the panel presenting the March 25th session on *How to Present a Case Before the Agricultural Labor Relations Board* at the Center for Collaborative Solutions' Annual Labor Management Conference.

The next Board Meeting will be held on March 3, 2010.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.