

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 5, 2008

Time: 10:00 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary
Barbosa & Analyst Massie
Others: General Counsel Lee; Consultant Steven Guida
Via Teleconference: Regional Director Capuyan, Staff Counsel
Brenner, Assistant General Counsel Mendoza, Legal Counsel
Kennedy, Field Examiners Galarza, Martinez, and Torres, Senior
Legal Typist Camero

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for October 15, 2008 were approved 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** Member Rivera-Hernandez reported on the LWDA meeting. The discussion included the Legislative special session meeting, agencies status reports, and commencing work on the next Capital IT Plan due in June. Member Shiroma reported on her speaking engagement in Santa Maria arranged by Assemblyman Sam Blakeslee's office. Richard Quandt, Counsel for the Grower-Shipper Vegetable Association was complimentary about the professionalism of regional staff and expressed appreciation of the ALRB outreach efforts.
4. **General Counsel Report:** General Counsel Lee attended meeting to rework attorney exam. An election will be held tomorrow in El Centro involving more than 100 employees. Approximately 10 new charges have been filed since the last Board meeting. General Counsel Lee and Assistant General Counsel Blanco attended the annual meeting of the Ventura County Agricultural Association on October 23 and discussed various issues facing growers and dairies. Job Announcements for a Business Services Officer in Sacramento and Legal Counsel/Assistant General Counsel in Visalia have been posted.

5. Executive Officer Report:

ELECTION REPORT:

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

UFW filed an NA at Fernandez Farms Inc. on October 16, 2008. Laborers International Union of North America, Local 1184 filed an NA and NO at Herb Thyme Farm on October 30, 2008.

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 will be held in abeyance pending resolution of ULP's mirroring the election objections. On October 5, 2007 the Regional Director dismissed three 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 three of the four 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. He set one objection for hearing and dismissed the rest. The UFW filed a request for review of the partial dismissal and the case has been transferred to the Board. The hearing on the sole objection originally scheduled for September 9, 2008 was taken off calendar due to the lack of a State budget. The hearing is now rescheduled for November 11, 2008. The Board's decision on the UFW request for review of the Executive Secretary's partial dismissal of election objections is pending.

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 and the case is pending the scheduling of an evidentiary hearing.

Mayflower/Rio Blanco Dairy, 07-RC-7-VI

On December 7, 2007, UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Mayflower Companies et al. The employer is a dairy located in Pixley with approximately 31 employees. The election was held on Friday, December 14, 2007 with the following tally:

UFCW	11
No Union	20

UCB's	<u>1</u>
Total	32

The UFCW filed objections on December 12, 2007. The objections are being held in abeyance pending investigation of overlapping ULPs. On February 4, 2008, the employer filed a motion to dismiss the objections alleging the union had neglected to serve the employer's legal representative. The UFCW filed a reply to the motion on February 12, 2008. On February 15, 2008, the acting Executive Secretary denied the motion to dismiss. The request for review was filed February 28, 2008. On March 7, 2008 the Board denied the employer's request for review. The matter is now pending resolution of the overlapping ULPs. On July 28, 2008, the Regional Director issued a complaint against Mayflower Companies which included all but one of the allegations in the Union's election objections. The election objections and complaint were consolidated for hearing on October 3, 2008 and the matter is scheduled for hearing January 14, 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. The Union's election objections are currently being screened by the Executive Secretary.

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 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 June 25, 2008, the UFW filed objections to the election. The investigation on the pending charges is continuing.

Herb Thyme 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 is scheduled tomorrow November 6, 2008 from 6 to 8 AM in Thermal, CA.

Sun Pacific Cooperative Incorporated, 2008-PM-002

On October 29, 2008 the Board denied the employer's motion to deny access to agents of the United Farm Workers finding that each of the alleged technical violations of the access regulation was de minimis and did not reflect an intentional or reckless disregard of the access rules.

COMPLAINT REPORT

One new complaint has issued.

Lassen Dairy, Inc., 07-CE-36-VI

In this case it is alleged that the employer gave two employees less favorable assignments, and then discharged them after the employees engaged in protected concerted activity by asking for a pay raise.

**PREHEARING, HEARING OR SETTLEMENT CONFERENCES
SCHEDULED:**

Four hearings are currently scheduled:

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

Hearing scheduled November 11, 2008

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

Prehearing held August 5, 2008

Hearing scheduled December 2, 2008.

Mayflower/Rio Blanco Dairy, 07-CE-85-VI

Prehearing scheduled November 18, 2008

Hearing scheduled January 17, 2009

The Hess Collection Winery, 99-CE-23-SAL

Prehearing scheduled July 29, 2008

Hearing scheduled February 17, 2009

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

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

The post-hearing briefs were due November 21, 2008

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

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

CASES SETTLED OR RESOLVED:

J. Lohr Vineyards, Inc., 07-CE-1-SAL

The J. Lohr Vineyards, Inc. complaint has settled and is pending a closing letter. In this case it is alleged that the employer laid off an employee after he and other employees engaged in protected concerted activity by complaining about the smell and condition of the bathroom.

Northstar Dairy, Case No. 07-CE-38-VI

In this case it is alleged that the employer discharged an employee for engaging in protected concerted activities. On September 26, 2008, the Visalia Regional Director, having issued a backpay specification, issued an order consolidating the above complaint with compliance proceedings. On October 27, 2008, the Visalia Regional Director approved an informal bilateral settlement. The settlement provides for payment of \$1616 and standard notice and posting remedies, with no admission of liability.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Sun Pacific Cooperative Incorporated, 2008-PM-002

Motion to Deny Access

BOARD DECISIONS:

Sun Pacific Cooperative Incorporated, 2008-PM-002

On October 29, 2008 the Board denied the employer's motion to deny access to agents of the United Farm Workers finding that each of the alleged technical violations of the access regulation was de minimis and did not reflect an intentional or reckless disregard of the access rules. 34 ALRB No. 5 (October 29, 2008)

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Boschma & Sons Dairy, 2008-MMC-2

The MMC petition was filed August 21, 2008. The employer did not file a response to the petition. On September 8, 2008 the Board issued an order directing the parties to mandatory mediation and conciliation. On September 10, 2008 the California State Mediation and Conciliation Service issued a list of arbitrators. On October 7, 2008 the California State Mediation and Conciliation Service was notified that the parties had selected Luella E. Nelson as their mediator/arbitrator. The mediation sessions are scheduled to begin on November 11, 2008.

COURT LITIGATION

Artesia Dairy, Case No. F054590 (33 ALRB No. 6)

Petition for review filed January 25, 2008. ALRB filed certified record on January 7, 2008. Petitioner's opening brief was filed March 13, 2008. The Board's response brief was filed April 16, 2008. The Real Party in Interest filed their brief on April 17, 2008. The petitioner's reply brief was filed May 12, 2008. Oral argument was held October 16, 2008. The matter is now pending decision by the court.

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 reply brief was filed October 2, 2008. The UFW's brief was filed October 3, 2008. The petitioner's reply brief is due November 12, 2008.

Aukeman Farms, Case No. F055722 (34 ALRB No. 2)

Petition for writ of review was filed July 25, 2008. On July 31, 2008 the court issued an order staying the Board's decision in this case. The certified record was filed on August 4, 2008. The petitioner's opening brief was filed September 9, 2008. The Board's reply brief was filed October 10, 2008. The petitioner's reply brief was filed

November 4, 2008. The matter is now pending decision by the court or the setting of oral argument.

6. Special Projects

- a. Information Technology Update/Case Tracking System – Steve Guida presented an overview of the web site changes, case tracking system and time tracking system to the Board and regional offices.
- b. Financial Integrity And State Managers Accountability Act (FISMA)— Member Rivera-Hernandez explained that several of the new policies have been drafted as part of creating a personnel policies and procedures manual. These sections will be distributed for review while work continues on several others.
- c. Revision of Retention Schedule – Board Counsel Wender discussed the need for revision of the ALRB Retention Schedule

7. Legislation: None

8. Personnel:

Hearing Officer – Interviews for the position were held on October 24 and 27, 2008. A candidate has been chosen. We are currently reviewing the candidate's file and contacting references.

Senior Legal Typist - Interviews were conducted on October 30, 2008. One candidate is under consideration. We are currently reviewing the candidate's file and contacting references.

9. Roundtable:

27th Annual Agribusiness Management Conference will be held November 18, 2008, at the Radisson Hotel and Conference Center, Fresno

The Oakland Program on Labor Law and Labor Arbitration sponsored by the Labor Arbitration Institute will be held on January 8, 2009, at the Oakland Marriot City Center, 1001 Broadway, Oakland, CA.

20th Annual Center for Collaborative Solutions Labor Management Conference – The ALRB has been asked to participate on one of the panels during the 2 ½ days of discussions and panels presented at the conference being held March 18-20, 2009 in Anaheim, CA.

The public meeting adjourned at 1:20 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.