

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 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
Others Present: Rodney Wilson, Consultant to Assembly Speaker Perez; Tim
Hamann, Secretary-Treasurer UFCW Local 5

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for February 3, 2010 were approved 3-0.
- 2. Public Comments:** Mr. Hamann indicated the UFCW is very interested in several cases before the Board.
- 3. Chairman Report:** The Labor and Workforce Development Agency has requested all future audits and draft reports be submitted 14 days in advance of their due dates. General Counsel Lee and Board Members Rivera-Hernandez and Guerrero attended the California Farm Bureau reception at the Citizen Hotel on March 2. The Western Growers Association Legislative Reception will be held Wednesday, March 10.
- 4. General Counsel Report:** General Counsel Lee attended the Instituto Laboral de la Raza 2010 Labor Awards dinner in San Francisco on February 12. Freddy Sanchez and John Ulrich of UFCW Local 101 were also in attendance. Mr. Lee reported that there has been a high amount of union activity in the Salinas Region resulting in numerous charges being filed last month. There is also a report of union activity in the Imperial Valley which may result in the filing of a petition.
- 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 was filed February 16, 2010. Petitioner's reply brief is due March 15, 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.

Poso Creek Family Dairy, 2010-RC-001-VIS

On February 11, 2010, the UFCW filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Poso Creek Family Dairy. The employer is a dairy located in Wasco CA with approximately 30 employees. On February 16, 2010, the Regional Director approved the union's request for withdrawal of the petition.

Frank Pinheiro Dairy, 2010-RD-001-VIS

On February 24, 2010, agricultural employee Guillermo C. Rios filed a decertification petition with the Visalia Regional Office seeking to oust the incumbent union UFCW Local 10, as the bargaining representative of the employees of Frank Pinheiro Dairy. The employer is a dairy located in Strathmore with approximately 23 employees. On March 1, 2010, the Regional Director blocked the election due to the employer's alleged failure to fully comply with the remedial order contained in a bilateral settlement agreement and because the employer, through its conduct, has delayed the mandatory mediation and conciliation process so as to prejudice the union's ability to effectively represent unit employees.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Temple Creek Dairy, Inc., 2009-CE-048-VIS
Prehearing Conference: March 29, 2010
Hearing: April 27, 2010

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

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

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

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

CASES SETTLED OR RESOLVED:

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

The case was taken off calendar as the parties reached an informal settlement agreement. The agreement was finalized on February 18, 2010.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Board granted the General Counsel's motion to close the case.

The UFW filed a request for reconsideration on February 12, 2010.

The matter is pending decision by the Board.

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

Board granted the General Counsel's motion to close the case.

The UFW filed a request for reconsideration on February 12, 2010.

The matter is pending decision by the Board.

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. On February 3, 2010, the Board requested briefing on questions concerning Labor Code section 1164 (a). Both the employer and union filed responsive briefs on February 16, 2010. The matter is pending before the Board for decision. Reply briefs were received February 23, 2010.

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. The Board filed a Motion for Summary Judgment/Summary Adjudication on December 18, 2009. Plaintiffs filed their Opposition and Declarations in Support Thereof on February 23, 2010. The Board's Reply is due on March 4, 2010. Hearing on the motion is scheduled for March 9, 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 court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent's answering brief was filed February 16, 2010. Petitioner's reply brief is due March 15, 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 was filed March 1, 2010. Petitioner's reply brief is due 25 days after the UFW files its response brief.

6. Special Projects

- a. Information Technology Update/Case Tracking System — The committee met numerous times since the last report. Two key areas are being focused on at this time: (1) review of the information tracked on complaints, and (2) development of legal templates necessitated by budget cutbacks and loss of legal support staff. The accounting and trust fund portion of the

project continues to be refined. Student Assistant Ichikawa reported her review of complaints issued between 2000 and 2007 is 75 percent complete.

- b. Policy Committee Report – The new statewide model “Telework Program Policy and Procedures” was discussed. This new program standardizes telework programs throughout state government. As part of this program, the state also adopted a new mandatory “Telework and Remote Access Security Standard” developed by the Office of Information Security (OIS). A formal IT Committee was established to review all IT issues for the agency.

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

SB 1474, as introduced, Steinberg. Labor representatives: elections.

This is a card check bill that is identical to SB 789, which was vetoed by the Governor in 2009.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board and the courts. Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

The bill was introduced, read for the first time, and sent to the Committee on Rules for assignment on February 19.

AB 1659, as introduced, Huber. State government: agency repeals.

This bill would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies, as defined, and to conduct a comprehensive analysis of every agency to determine if the agency is still necessary and cost effective. The bill would require each agency scheduled for repeal to submit a report to the committee containing specified information. The bill would require the committee to take public testimony and evaluate the agency prior to the date the agency is scheduled to be repealed, and would require that an agency be eliminated unless the Legislature enacts a law, based upon a recommendation endorsed by a vote of the majority of the members of the committee, to extend, consolidate, or reorganize the agency. The bill would specify the composition of the committee, which would be appointed by the President pro Tempore of the Senate, the Speaker of the Assembly, and the Governor, and certain aspects of its operating procedure. The bill would also make a statement of legislative intent to enact legislation that provides for the repeal of every entity of state government, excluding an agency that is constitutionally created or an agency related to higher education. The bill was read for the first time and sent to print on January 19, 2010. On February 4, 2010, the bill was referred to the Committee on Business and Professions.

8. Regulations – *Update on status of rulemaking process regarding proposals on exculpatory evidence and familial voter eligibility exclusions adopted by the Board on November 4, 2009 and February 3, 2010.* – The rulemaking file was submitted to Office of Administrative Law (OAL) on February 25, 2010. OAL has 30 working days to approve or reject the amendments.

9. Personnel – Student Assistant Ichikawa will be taking a leave of absence and will be re-joining the agency approximately the middle of April 2010.

10. Roundtable –

The Fair Political Practices Commission Annual Statement of Economic Interest Form 700 is due on April 1, 2010.

Board Member Shiroma discussed that while the ALRB had committed to doing a panel during the Center for Collaborative Solutions Labor Management Conference in Anaheim on March 24-26, the Board and General Counsel will be looking at ways to reduce the cost or at no cost options.

A Headquarters staff meeting is scheduled for March 11, 2010, at 10:00 a.m.

The public meeting adjourned at 11:25 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.