

Agricultural Labor Relations Board

Report to the Legislature



Fiscal Year 2009-2010

Members of Board

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Date Submitted: December 22, 2010

¹ Separated December 17, 2009.

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Introduction

This report is being submitted pursuant to Labor Code section 1143, which mandates that the Agricultural Labor Relations Board (ALRB or Board) annually report to the Legislature and to the Governor on the cases heard; decisions rendered; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board; and an account of moneys it has disbursed (monetary awards to farm workers in unfair labor practice cases).

During fiscal year 2009-2010 (FY 2009-10), the ALRB celebrated its 35th anniversary. Since the Board's creation in 1975, its dedicated employees have continued to advance the agency's core mission under the Agricultural Labor Relations Act (Act). As with other state agencies, the Board's efforts to administer and enforce the Act in an efficient manner that gives full effect to the rights afforded to over 800,000 employees and employers grows more difficult as a result of reduced state resources.

However, the work of the Board and General Counsel remains focused on increasing efficiency in moving cases and complaints through the investigative and appellate processes respectively. Pursuant to new policies concerning the investigation and disposition of charges and aided by the Board's reorganization of regional office staff into two regional and one sub-regional office, the General Counsel's Office completed the investigation and disposition of 197 Unfair Labor Practice (ULP) charges. Over the course of the year, 70 charges were withdrawn after investigation, 84 were dismissed for lack of a prima facie case, 20 were settled and 23 were included in complaints. These figures represent a disposition of 73 percent of new (105) and pending (168) ULP charges in FY 2009-10.

While the General Counsel's Office addressed its case load of ULP charges, the Board focused its time and resources on the multitude of legal matters that routinely come before it for resolution. As such, it issued decisions in nine cases and released 23 Administrative Orders. During FY 2009-10 Board decisions increased by 50 percent (six were issued in FY 2008-09) and Administrative Orders increased 53 percent (fifteen were issued in FY 2008-09). Board staff also conducted three representation elections, issued three certifications, released three cases for compliance, and achieved monetary remedies exceeding \$135,000 for 51 aggrieved workers.

The coming year will present a growing challenge to continue to make progress with fewer people. Over the past eight years, the ALRB has lost approximately 1/3 of its positions, having gone from 55.5 positions at the end of FY 2001-02 to its current 37.5 positions statewide. The Board and General Counsel continue to

explore methods to provide the necessary oversight of representation elections, avoid delays in the investigation and resolution of election objections and unfair labor practice charges, continue meaningful educational outreach efforts for all constituencies, and advance efforts to ensure compliance with Board orders.

In the interest of protecting privacy rights of the ALRB's employees, all sensitive information including names, salaries, and duties of ALRB personnel is provided under separate cover and can be obtained through a written request to the Executive Secretary.

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board

Decisions Issued By the Board in Fiscal Year 2009-2010

The Board issued nine (9) decisions in fiscal year 2009-2010. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website: www.alrb.ca.gov).

Tule River Dairy and P&M Vanderpoel Dairy, 35 ALRB No. 4

This case involved an alleged unlawful discharge. Following an evidentiary hearing, the Administrative Law Judge (ALJ) found that the employer violated sections 1153(a) and 1153(c) of the Agricultural Labor Relations Act (ALRA) by discharging an employee for engaging in union activity. In making his findings of fact, the ALJ admitted into evidence a hearsay statement attributing to a former supervisor the assertion that the discharge was due to union activity. Though this statement was admitted only to impeach an earlier hearsay statement of the supervisor that he did not know the reason for the discharge, it was critical to the ALJ's conclusion that the necessary element of employer knowledge of the employee's union activity had been met.

The Board concluded that the hearsay statement was not admissible. Finding that in the absence of the admission of the hearsay statement the record evidence was insufficient to establish employer knowledge, the Board reversed the finding of a violation and dismissed the complaint in its entirety.

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 35 ALRB No. 5

This decision was vacated by a subsequent decision found at 36 ALRB No. 1.

Gallo Vineyards, Inc., 35 ALRB No. 6

This case followed an effort to decertify the United Farm Workers of America (UFW) as the collective bargaining representative of the employees of Gallo Vineyards, Inc., in Sonoma County. After an election, in which the majority of employees voted for the "No Union" choice, the UFW objected to the adequacy of the employee voter eligibility list supplied by the Employer. After an investigative hearing, the Investigative Hearing Examiner (IHE) recommended that the Board set aside the election, finding that the number of facially incorrect addresses on the list fell within the parameters of earlier Board decisions in which an election was set aside.

The Board affirmed the conclusion that the decertification election should be set aside, but its analysis differed, somewhat, from that of the IHE. The Board clarified that an inquiry into the effect of a list's deficiencies must be made as part of analyzing whether an election should be set aside. In this case, the Board concluded that the number of facially incorrect addresses on the eligibility list, coupled with evidence that the UFW relied heavily on the deficient eligibility list and the lack of convincing evidence that the

deficiencies were mitigated, merited setting aside the election results. The Board also clarified that under an outcome determinative standard, it is of no import whether the provision of a deficient list was the result of gross negligence or bad faith.

Lassen Dairy, Inc., 35 ALRB No. 7

In this matter, the ALJ found that the employer violated section 1153, subdivision (a) of the ALRA by assigning two employees more onerous working conditions in retaliation for their protected concerted activities. The ALJ also found that one of the two men was unlawfully discharged. The ALJ dismissed the allegation that the other man was unlawfully discharged, finding that the employer met its burden of demonstrating that it would have discharged the employee even in the absence of his protected activity.

The Board summarily affirmed the ALJ's decision with additional comment. While affirming the ALJ's rejection of the employer's claim that collateral estoppel principles should operate to preclude a finding that the employee was discharged for protected activity, based on a prior decision by the Labor Commissioner finding that he quit his employment, the Board relied on authorities that directly establish that the ALRB has primary jurisdiction over matters arising under the ALRA.

Mushroom Farms, a Division of Spawn Mate, Inc., 35 ALRB No. 8

The ALJ found that an employee's verbal complaint to his foreman about not being paid correctly for overtime was protected concerted activity because he was asserting a right of a collective bargaining agreement. The ALJ concluded, however, that the employee was not engaged in protected conduct when he concealed baskets of mushrooms on the floor of the picking room. First, the ALJ reasoned that his actions could not be characterized as a concerted protest because they were done secretly. Second, the ALJ concluded that the employee was engaged in unprotected self-help because he was acting solely for his own personal gain and not that of his co-workers. The ALJ concluded that the employee was fired due to his unprotected act of concealing the mushrooms on the floor, not because of his protected verbal complaint to the foreman; therefore, the employer's adverse action did not violate the Act.

The Board affirmed the ALJ's decision with some modification. The Board held that because this case involved the assertion by a single employee of a right established by a collective bargaining agreement, the doctrine established by *Interboro Contractors, Inc.* (1966) 157 NLRB 1295 controls. The act of hiding the mushrooms did not communicate to management in a reasonably clear way that the employee was taking an action to enforce the collective bargaining agreement. For this reason, this portion of his conduct was not protected concerted activity. The Board found that the employer proved that it fired the employee for the unprotected aspect of his conduct, and therefore affirmed the ALJ's finding that the complaint be dismissed.

Henry Hibino Farms, LLC, 35 ALRB No. 9

This case involved a decertification election among employees of Henry Hibino Farms, LLC (Hibino Farms). At issue was whether certain employees from Oasis Agricultural Services (Oasis), contracted to work at Hibino Farms by Nunes Vegetables, Inc. (Nunes), were employees of the Hibino Farms bargaining unit and therefore eligible to vote in the decertification election. Following the election, the UFW filed election objections related to this issue.

The Investigative Hearing Examiner (IHE) held that Nunes was not a labor contractor vis-à-vis Hibino Farms and was therefore not excluded from the statutory definition of employer under section 1140.4(c) of the ALRA. The IHE concluded that Nunes, not Hibino Farms, was the more appropriate statutory employer of the employees at issue.

The Board affirmed the IHE decision with clarification. The Board held that the determination as to which of two possible statutory employers is the appropriate employer to which collective bargaining responsibility should attach is based on which has the more substantial long-term interest in the ongoing agricultural operation. The Board agreed with the IHE that Nunes' substantial control of the farming operation, coupled with Hibino Farms' complete lack of control over the work of the employees in question, compelled the conclusion that Hibino Farms was not the statutory employer of those employees.

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 36 ALRB No. 1

(This decision vacated a previous decision found at 35 ALRB No. 5)

The United Food and Commercial Workers, Local 5, (UFCW) filed a request for mandatory mediation and conciliation (MMC) pursuant to ALRA section 1164(a). Following the request, the Board issued its decision at 35 ALRB No. 5 in which it interpreted a 25 employee prerequisite found in ALRA section 1164(a) as requiring a head count of all agricultural employees employed or engaged at some time in any given week in the year prior to the request for MMC. Under this standard, the Board found that payroll records submitted by the employer showed that the 25 employee threshold was met during two calendar weeks in the relevant 12 month period. Therefore, the Board ordered the parties to participate in the MMC process.

The employer filed a petition for writ of review of 35 ALRB No. 5 with the Court of Appeal. The employer argued that the Board erred in interpreting the statute's 25 employee prerequisite. Although the Board argued that the Court was without jurisdiction to consider the employer's petition, the Board found merit in certain arguments presented by the employer, and expressed the intent to reconsider its decision. Following the Court's order denying the employer's petition for review, the Board issued an order staying the MMC process pending reconsideration of its original decision.

The Board vacated its previous decision and order, 35 ALRB No. 5. The Board revised its interpretation of section 1164(a), and construed the statute's phrase "...employed or engaged 25 or more agricultural employees during any calendar week..." as requiring an employer to employ or engage 25 or more agricultural employees throughout the entire course of any calendar week during the 12 month period leading up to the request for MMC. The Board then ordered an expedited hearing on the status of several individuals, and on other issues relevant to determining whether the 25 employee threshold has been met under the revised interpretation.

Herb Thyme Farms, Inc., 36 ALRB No. 2

This case involved the alleged unlawful discharge of two employees. Following an evidentiary hearing, the ALJ dismissed all allegations in the complaint, concluding that the employer did not commit unfair labor practices by discharging either employee. The ALJ found that one employee was discharged for insubordination, while the other was discharged for a physical confrontation with his supervisor. The ALRB's General Counsel alleged that the grounds for the discharges were pretextual and that instead both discharges were due to these employees' protected concerted activities. The General Counsel filed exceptions to the ALJ's decision.

The Board summarily affirmed the ALJ's decision, noting that the ALJ's decision was by necessity heavily dependent on credibility determinations, including those based on demeanor. The Board's review of the record revealed no basis for disturbing the ALJ's credibility determinations. Therefore, the complaint was dismissed in its entirety.

Kawahara Nurseries, Inc., 36 ALRB No. 3

A petition for certification was filed by the United Farm Workers of America (Union or UFW) to represent the agricultural employees of the employer. After the election, the initial tally of ballots was as follows: "union," 70; "no union," 68, and 28 unresolved challenged ballots. Twenty-three (23) individuals with the job title "merchandisers" were challenged as non-agricultural employees, four (4) were challenged as supervisors, and one (1) was challenged as not on the eligibility list.

The Regional Director (RD), in his report on challenged ballots, recommended that the challenges to all twenty-three (23) merchandisers be sustained, reasoning that they were not engaged in agriculture because all of their duties occurred after delivery to market. He recommended that the challenges to three (3) of the alleged supervisors be set for a hearing. He also concluded that the challenge to one (1) of the alleged supervisors be overruled and that the challenge to the individual not on the eligibility list be sustained.

The employer filed exceptions to the RD's report, arguing that the challenges to the twenty-three (23) merchandisers should be overruled because they were engaged in primary agriculture. The employer also argued that it was not necessary to hold a hearing

on the status on the three (3) alleged supervisors as these individuals did not exercise independent judgment and were “lead persons,” not supervisors.

The Board affirmed the RD’s recommendation to set the challenges of the three (3) alleged supervisors for a hearing because their status presents material issues of fact. The Board did not find merit in the argument that the merchandisers were engaged in primary agriculture. The Board found, in contrast to the RD, that the merchandisers may be engaged in secondary agriculture as their work could be viewed in connection with and incident to the employer’s general enterprise rather than in connection with a separate commercial enterprise. The Board found that the question of whether any of the merchandisers regularly handle non-Kawahara plants, thereby taking them out of the ALRB’s jurisdiction, presented material issues of fact, and ordered the challenges to these individuals set for hearing.

Board Administrative Orders

Administration Order Number	Case Name	Case Number	Issue Date	Description
2009-09	Hess	2003-MMC-1	08/06/09	Order Denying Employer Request For Review Of Regional Director's Decision Not To Approve Proposed Settlement Agreement
2009-10	D' Arrigo	2007-CE-12-SAL	08/12/09	Order Denying Respondent's Application For Permission To Appeal Ruling Of ALJ
2009-11	Frank Pinheiro	2009-MMC-01	08/28/09	Order Dismissing Request For Mandatory Mediation And Conciliation
2009-12	Ace Tomato	93-CE-37-VI	09/24/09	Order Holding In Abeyance Regional Director's Motion To Close Pending Evidentiary Hearing
2009-13	UFW (Gutierrez)	06-CL-8-SAL	09/28/09	Order Requesting Declaration From Salinas Regional Director Re Signature Dates On Formal Settlement Agreement
2009-14	UFW (Carranza)	06-CL-12-SAL	09/29/09	Order Requesting Declaration From Salinas Regional Director Re Signature Dates On Formal Settlement Agreement
2009-15	San Joaquin Tomato Growers	93-CE-38-VI	10/06/09	Order Holding In Abeyance Regional Director's Motion To Close Pending Evidentiary Hearing
2009-16	UFW (Gutierrez)	06-CL-8-SAL	11/05/09	Order Approving Bilateral Formal Settlement Agreement
2009-17	UFW (Carranza)	06-CL-12-SAL	11/05/09	Order Approving Bilateral Formal Settlement Agreement
2009-18	Ace Tomato Co. & San Joaquin Tomato Growers	93-CE-37-SAL 93-CE-38-SAL	11/23/09	Order For Production of Declarations In Support Of Representations At Prehearing Conference

Administration Order Number	Case Name	Case Number	Issue Date	Description
2010-01	Frank Pinheiro Dairy	2009-MMC-02	01/21/10	Order Staying Mandatory Mediation and Conciliation
2009-02	Frank Pinheiro Dairy	2009-MMC-02	02/03/10	Order Requesting Briefing On Novel Issue; Order Requesting Stipulation Concerning Payroll Records
2010-03	San Joaquin Tomato Growers, Inc.	93-CE-38-VI	02/04/10	Order Granting Motion To Close Case
2010-04	Ace Tomato, Inc.	93-CE-37-VI	02/04/10	Order Granting Motion To Close Case
2010-05	San Joaquin Tomato Growers, Inc.	93-CE-38-VI	03/04/10	Order Denying Reconsideration And Reopening; Order Granting Reconsideration Sua Sponte
2010-06	Ace Tomato, Inc.	93-CE-37-VI	03/04/10	Order Denying Reconsideration And Reopening; Order Granting Reconsideration Sua Sponte
2010-07	Frank Pinheiro Dairy	2010-RD-001-VIS	03/11/10	Order Requesting Response To Requests For Review Of Regional Director's Decision To Block Election
2010-08	Hess Collection Winery	2010-RD-001-SAL	04/01/10	Order Requesting Response To Request For Review Of Regional Director's Decision To Block Election
2010-09	Frank Pinheiro Dairy	2010-RD-001-VIS	04/11/10	Order Denying Requests For Review And Upholding Regional Director's Decision To Block Election
2010-10	Frank Pinheiro Dairy	2009-MMC-02	05/06/10	Order Granting Request To Withdraw Request For Mandatory Mediation And Conciliation
2010-11	Hess Collection Winery	2010-RD-001-SAL	05/20/10	Order Denying Requests For Review And Upholding Regional Director's Decision To Block Election
2010-12	Ace Tomato, Company, Inc.	93-CE-37-VI	06/14/10	Order Granting In Part UFW's Appeal From ALJ's Ruling Revoking, In Part, UFW's Notice In Lieu Of Subpoena
2010-13	San Joaquin Tomato Growers, Inc.	93-CE-38-VI	06/14/10	Order Granting In Part UFW's Appeal From ALJ's Ruling Revoking In Part UFW's Notice In Lieu Of Subpoena

Litigation Initiated/Defended by Board

In the majority of cases, parties to decisions of the Board file petitions for review in the courts of appeal pursuant to Labor Code section 1160.8. Therefore a significant portion of the Board's workload is comprised of writing and filing appellate briefs and appearing for oral argument in those cases. At times the Board is also required to defend against challenges to its jurisdiction and other types of collateral actions in both state and federal courts.

A list of cases on the Board's litigation docket for fiscal year 2009-2010 and summaries of those cases is provided below.

*Vincent B. Zaninovich & Sons v.
Agricultural Labor Relations Board*

Case No. 34 ALRB No. 3
Court Case No. S174304

Following a hearing, an Administrative Law Judge (ALJ) issued a decision in which he found that Vincent B. Zaninovich & Sons (Employer) violated Labor Code section 1153(a) by making threats of discharge and bankruptcy, as well as other threats of job loss, during the course of an election campaign. The ALJ dismissed an allegation of constructive discharge, finding that the harassment, threats, and other misconduct suffered by the targeted employee did not meet the legal threshold for constructive discharge. The Employer filed exceptions to the ALJ's decision, arguing that the Board should overturn all findings of violations. The United Farm Workers of America (UFW) filed exceptions arguing that the ALJ erred in not finding merit in the constructive discharge allegation.

The Board affirmed the ALJ's findings and conclusions. With regard to the allegation of constructive discharge, the Board found that the harassment and threats directed at the worker in question were due to his union involvement and may have been intended to cause him to quit. However, in light of the strict standard for such claims, the Board concluded that at the time the individual left work, the adverse conditions he faced had not yet reached the legal threshold for constructive discharge. In light of the findings that supervisors made numerous unlawful threats and harassed union supporters, the Board found it appropriate, in addition to the notice remedies proposed by the ALJ, to require that a separate notice reading be conducted among the Employer's current supervisors and that notices be given to supervisors hired during the ensuing year.

On July 15, 2008, Employer filed a petition for writ of review of the Board's decision with the Fifth District Court of Appeal. On June 18, 2009, the Court of Appeal summarily denied Employer's petition for review. On June 26, 2009, Employer filed a petition for review in the California Supreme Court. On July 29, 2009, the California

Supreme Court denied the petition for review. The matter was released for compliance by the ALRB's Executive Secretary on August 3, 2009.

Frank Pinheiro Dairy dba Pinheiro Dairy &
Milanesio Farms v. Agricultural Labor
Relations Board

Case No. 35 ALRB No.5
Court Case No. F058638

The United Food and Commercial Workers, Local 5 (UFCW) filed a declaration requesting mandatory mediation and conciliation (MMC) with Frank Pinheiro Dairy (Employer) pursuant to California Labor Code section 1164(a). When Employer filed its answer to the UFCW's request for MMC, Employer argued that it did not meet the 25 agricultural employee threshold that is a prerequisite for a referral to MMC (Labor Code section 1164(a) specifies that an agricultural employer for purposes of the MMC provisions of the statute is one "who has employed or engaged 25 or more agricultural employees during any calendar week in the year preceding the filing of a declaration pursuant to this subdivision.") Employer argued that it never employed more than 24 agricultural employees simultaneously at any given time during any calendar week in the 12 months preceding the request for mediation.

The Board held that the plain meaning of section 1164(a) unambiguously requires a head count of agricultural employees who were on the payroll during any given week in the year prior to the filing of a declaration seeking a referral to MMC. Under this standard, the Board found this prerequisite for a referral to MMC was met and ordered the parties to participate in the process.

The Employer filed a petition for writ of review and request for immediate stay of the Board's order. The Employer argued that the statute's phrase "during any calendar week" was ambiguous and that the Board erred in interpreting the phrase the way it did. The Court granted the immediate stay, but later the Court issued an order dissolving the stay without issuing a final ruling in the matter. The Board's position was that the Court lacked jurisdiction to consider Employer's petition for review; however, the Board filed a subsequent request for remand in order to consider arguments presented by Employer for the first time in its petition for writ of review. On December 28, 2009, the Court issued an order denying Employer's petition for review. Following the Court's order, the Board stayed the MMC process pending reconsideration of its decision sending the parties to MMC.

United Farm Workers of America v. ALRB
and San Joaquin Tomato Growers, Inc.

Case No. 20 ALRB No. 13
Court Case No. C064352

On May 15, 2009 the Visalia Regional Director filed a motion to close case no. 20 ALRB No. 13, *San Joaquin Tomato Growers, Inc.* (Employer), without full compliance. On February 4, 2010, the Board granted the Regional Director's motion to close the case. The UFW filed a request for reconsideration on February 12, 2010. On March 4, 2010 the Board denied the motion for reconsideration, but granted reconsideration on other grounds, *sua sponte*.

On March 5, 2010 the UFW filed a petition for writ of review of the Board's order in the Third District Court of Appeal. The ALRB filed a motion to dismiss the petition for writ of review for lack of jurisdiction and/or mootness. On April 20, 2010, the Court granted the ALRB's motion to dismiss the petition for writ of review.

United Farm Workers of America v. ALRB
And Ace Tomato Company, Inc.

Case No. 20 ALRB No. 7
Court Case No. C064360

On May 20, 2009 the Visalia Regional Director filed a motion to close case no. 20 ALRB No. 7, *Ace Tomato Company, Inc.* (Employer), without full compliance. On February 4, 2010, the Board granted the Regional Director's motion to close the case. The UFW filed a request for reconsideration on February 12, 2010. On March 4, 2010 the Board denied the motion for reconsideration, but granted reconsideration on other grounds, *sua sponte*.

On March 5, 2010 the UFW filed a petition for writ of review of the Board's order in the Third District Court of Appeal. The ALRB filed a motion to dismiss the petition for writ of review for lack of jurisdiction and/or mootness. On April 20, 2010, the Court granted the ALRB's motion to dismiss the petition for writ of review.

Bryan DeHaan and Jacob DeHaan v.
California Agricultural Labor Relations
Board, et al.

Court Case No. 09-232146

Plaintiffs filed a complaint in the Superior Court of Tulare County, Visalia Division, alleging that ALRB agents falsely imprisoned minors Bryan and Jacob DeHaan, in the process of taking their challenged ballot declarations at a representation election conducted by the ALRB at Heritage Dairy in Tulare, CA. The complaint alleges that the two boys were detained and questioned against their will by ALRB agents for approximately 15-20 minutes prior to casting their ballots in the election. Plaintiffs sought unspecified actual damages as well as exemplary and punitive damages. On

December 18, 2009, a motion for summary judgment was filed on behalf of the ALRB. A hearing on the motion was held March 9, 2010. The motion for summary judgment was granted on March 17, 2010.

(Plaintiffs previously submitted a claim to the State Victim Compensation and Government Claim Board pursuant to Gov. Code section 905 et seq. (claim no. G57804) seeking general damages for emotional distress in the amount of \$50,000 for each plaintiff. The Victim Compensation and Government Claim Board rejected the claim on January 30, 2009.)

Lassen Dairy, Inc. v.
Agricultural Labor Relations Board

Case No. 35 ALRB 7
Court Case No. F058940

In this matter, the ALJ found that the employer violated section 1153, subdivision (a) of the ALRA by assigning two employees more onerous working conditions in retaliation for their protected concerted activities. The ALJ also found that one of the two men was unlawfully discharged. The ALJ dismissed the allegation that the other man was unlawfully discharged, finding that the employer met its burden of demonstrating that it would have discharged the employee even in the absence of his protected activity.

The Board summarily affirmed the ALJ's decision with additional comment. While affirming the ALJ's rejection of the employer's claim that collateral estoppel principles should operate to preclude a finding that the employee was discharged for protected activity, based on a prior decision by the Labor Commissioner finding that he quit his employment, the Board relied on authorities that directly establish that the ALRB has primary jurisdiction over matters arising under the ALRA.

On November 30, 2009, Employer filed a petition for writ of review of the Board's decision. On May 26, 2010, the Court of Appeal summarily denied Lassen Dairy's petition for review. Petitioner did not seek review in the California Supreme Court.

Gallo Vineyards, Inc. (Roberto Parra) v.
Agricultural Labor Relations Board

Court Case No. C063487
Case No. 35 ALRB No. 6

This case followed an effort to decertify the United Farm Workers of America (UFW) as the collective bargaining representative of the employees of Gallo Vineyards, Inc., in Sonoma County. After an election, in which the majority of employees voted for the "No Union" choice, the UFW objected to the adequacy of the employee voter eligibility list supplied by the Employer. After an investigative hearing, the Investigative Hearing Examiner (IHE) recommended that the Board set aside the election, finding that the

number of facially incorrect addresses on the list fell within the parameters of earlier Board decisions in which an election was set aside.

The Board affirmed the conclusion that the decertification election be set aside, but its analysis differed somewhat from that of the IHE. The Board clarified that an inquiry into the effect of a list's deficiencies must be made as part of analyzing whether an election should be set aside. In this case, the Board concluded that the number of facially incorrect addresses on the eligibility list, coupled with evidence that the UFW relied heavily on the deficient eligibility list and the lack of convincing evidence that the deficiencies were mitigated, merited setting aside the election results. The Board also clarified that under an outcome determinative standard, it is of no import whether the provision of a deficient list was the result of gross negligence or bad faith.

On November 24, 2009, the decertification petitioner filed a petition for writ of review of the Board's decision in the Third District Court of Appeal. On April 28, 2010, the Court directed Petitioner to demonstrate in writing that the petition was filed in the proper Court pursuant to Labor Code section 1160.8. On May 11, 2010, the Third District Court of Appeal sent a letter to the California Supreme Court requesting that the matter be transferred to the First Appellate District because it was filed in the wrong court. On June 11, 2010, the First District Court of Appeal summarily denied the petition for review.

Regional Office Activity

In fiscal year 2009-2010, one hundred and five (105) unfair labor practice (ULP) charges were filed involving 1,080 employees.

Visalia Regional Office:

- Fifty-two (52) ULP Charges Filed Against Employers

Salinas Regional Office:

- Forty-five (45) ULP Charges Filed Against Employers
- Eight (8) ULP Charges Filed Against Labor Organizations

Overall, the Board settled, dismissed, withdrew or sent to complaint a total of one hundred and ninety-seven (197) charges involving 3,654 employees during fiscal year 2009-2010. The complaints issued or settlements were as follows:

Ten (10) new complaints issued encompassing twenty-three (23) charges.

#	Case No.	Respondent Name	Complaint Date	Status
1.	07-CE-70-SAL	The Growers Company, Inc.	10/30/09	Complaint Withdrawn 5/10/10 due to Private Party Settlement
2.	2009-CE-048-VIS 2009-CE-051-VIS 2009-CE-052-VIS	Temple Creek Dairy, Inc., a California Corporation	11/09/09	Hearing held; ALJ Decision issued 8/5/10
3.	2009-CE-004-SAL	S.M.D. Vineyards, Inc., a California Corporation	12/03/09	Settled 2/18/10
4.	2009-CE-063-VIS 2009-CE-064-VIS 2009-CE-067-VIS 2009-CE-068-VIS	H & R Gunlund Ranches, Inc., a California Corporation	12/17/09	Pending hearing
5.	2009-CE-039-VIS	Quality Produce, LLC	12/30/09	Settled 6/8/10
6.	07-CE-65-VI 07-CE-80-VI 08-CE-73-VI	Lassen Dairy Inc., dba Meritage Dairy	01/21/10	Pending hearing
7.	2009-CE-057-VIS	Deardorff Family Farms, LLC	03/02/10	Pending hearing
8.	06-CE-9-VI 06-CE-52-VI 06-CE-53-VI 07-CE-49-VI	Sam & Carmen Knevelbaard dba Bayou Vista Dairy and Bayou Vista Farms West and Knevelbaard Calves and Horseshoe Transportation, LLC and K-Baar Dairy	04/23/10	Pending hearing
9.	07-CL-5-SAL 07-CL-6-SAL 07-CL-7-SAL	United Farm Workers of America	05/19/10	Pending hearing
10.	2009-CE-021-VIS 2009-CE-035-VIS	Martin Hein Ranch Company, A California Corporation and MDR Farming, A Partnership	06/03/10	Pending hearing

Two (2) hearings were conducted on the following cases:

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

2009-CE-048-VIS – Temple Creek Dairy, Inc.

During the fiscal year, twenty-six (26) settlements were achieved which overall encompassed forty-three (43) charges; of these settlements twelve (12) were achieved pre-complaint, six (6) were achieved at the complaint stage and eight (8) were private party settlements.

Settlements – (Pre-Complaint)

#	Case No.	Respondent Name	Settlement Type	Settlement Date
1.	08-CE-65-VI	Sun Pacific Cooperative, Inc.	Informal	08/18/09
2.	2008-CE-021-VIS 2009-CE-042-VIS	Abe-El Produce, a General Partnership	Informal	09/14/09
3.	08-CE-01-VI	Boschma & Sons Dairy a Sole Proprietorship	Informal	09/17/09
4.	2008-CE-057-VIS 2008-CE-068-VIS 2008-CE-069-VIS 2008-CE-070-VIS	Lourenco Dairy, a Sole Proprietorship	Informal	10/21/09
5.	06-CL-8-SAL	United Farm Workers of America	Formal	11/05/09
6.	06-CL-12-SAL	United Farm Workers of America	Formal	11/05/09
7.	2008-CE-066-VIS	Betteravia Farms, a Limited Liability Corporation	Informal	12/23/09
8.	07-CE-44-SAL 07-CE-66-SAL	San Martin Mushrooms	Informal	01/27/10
9.	2008-CE-017-SAL 2008-CE-018-SAL (Amended) 2008-CE-021-SAL (Amended)	San Martin Mushrooms	Informal	01/27/10
10.	2008-CE-034-SAL	San Martin Mushrooms	Informal	01/27/10
11.	2008-CE-007-SAL	Gallo Vineyards, Inc.	Informal	02/26/10
12.	2008-CE-039-VIS	Rocking S Dairy, a Partnership	Informal	03/15/10

Settlements – (Complaint)

#	Case No.	Respondent Name	Settlement Type	Settlement Date
1.	07-CE-63-SAL 07-CE-67-SAL 07-CE-69-SAL	San Martin Mushrooms	Informal	08/03/09
2.	07-CE-28-SAL 07-CE-29-SAL	Frog’s Leap Winery	Informal	09/30/09
3.	07-CE-12-SAL 07-CE-68-SAL	D’ Arrigo Bros., Co. of California, a California Corporation	Informal	11/03/09
4.	2009-CE-011-VIS 2009-CE-013-VIS 2009-CE-017-VIS 2009-CE-018-VIS 2009-CE-019-VIS 2009-CE-022-VIS 2009-CE-025-VIS	Frank Pinheiro Dairy DBA Pinhero Dairy and Milanesio Farms, a Partnership	Informal	12/09/09
5.	2009-CE-004-SAL	S.M.D. Vineyards, Inc., a California Corporation	Informal	02/18/10
6.	2009-CE-039-VIS	Quality Produce, LLC	Informal	06/08/10

Settlements – (Private Party)

#	Case No.	Respondent Name	Withdrawal Date
1.	2009-CE-030-VIS	Castelanelli Bros. Dairy	08/03/09
2.	2009-CE-047-VIS	Five Diamond Cold Storage	08/18/09
3.	07-CE-83-VI	Rocking S Dairy	03/15/10
4.	2009-CE-062-VIS	Chris DeJong Dairy	04/14/10
5.	2010-CE-029-SAL	Monterey Mushrooms, Inc.	04/19/10
6.	2010-CE-012-VIS	Magdaleno Farm Labor Contractor	04/30/10
7.	07-CE-70-SAL	The Growers Company	05/10/10
8.	2010-CE-016-VIS	Alila Farm Labor, LLC	06/10/10

Election Activity

During fiscal year 2009-2010, labor organizations filed seven (7) notices of intent to take access (NA) and two (2) notices of intent to organize (NO). During fiscal year 2009-2010, labor organizations or farmworkers filed seven (7) election petitions, including representation (RC) and decertification (RD) petitions.

Date Filed	Type of Filing	Labor Organization	Employer
09/22/09	NA	UFCW Local 5	Poso Creek Family Dairy
09/22/09	NA	UFCW Local 5	Solo Dairy Farms
09/22/09	NA	UFCW Local 5	JDS Ranch
09/28/09	NA	United Farm Workers of America (UFW)	Giumarra Vineyards Corporation and Giumarra Farms Inc.
01/11/10	NA	UFW	Kawahara Nurseries, Inc.
01/21/10	NA	UFW	Sonoma Cutrer Vineyards
02/11/10	NA	UFCW Local 5	Poso Creek Family Dairy
09/28/09	NO	UFW	Giumarra Vineyards Corporation and Giumarra Farms Inc.
02/11/10	NO	UFCW Local 5	Poso Creek Family Dairy
01/12/10	RC	UFW	Kawahara Nurseries, Inc.
01/21/10	RC	UFW	Sonoma Cutrer Vineyards
02/11/10	RC	UFCW Local 5	Poso Creek Family Dairy
07/13/09	RD	UFCW Local 5	Tony & Dina Esteves dba Esteves Dairy
02/24/10	RD	UFCW Local 5	Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms
03/11/10	RD	UFCW Local 5	The Hess Collection Winery
04/29/10	RD	UFCW Local 5	Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms

During fiscal year 2009-2010, the Board conducted three (3) elections and issued three (3) certifications.

Election Date	Employer	Labor Organization
07/20/09	Tony & Dina Esteves dba Esteves Dairy	UFCW Local 5
01/19/10	Kawahara Nurseries, Inc.	UFW
05/06/10	Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms	UFCW Local 5

Certification Date	Type of Certification	Employer	Labor Organization
08/04/09	Results of Election	Tony & Dina Esteves dba Esteves Dairy	UFCW Local 5
12/23/09	Results of Election	Henry Hibino Farms	UFW
05/25/10	Results of Election	Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms	UFCW Local 5

During fiscal year 2009-2010, the Board held no hearings on elections, issued one (1) investigative hearing examiner decision and issued three (3) Board decisions involving elections.

Outreach Activities

Fiscal year 09/10 proved to be a very positive year for outreach activities. Staff from both regional offices, the sub-regional office and from the office of the General Counsel in Sacramento attended various events throughout California with the goal of informing workers about their rights under the ALRA, and about the role of the ALRB in enforcing such rights. ALRB staff distributed outreach materials, made presentations, answered workers' questions and collaborated with other agencies in order to educate farm workers and others who serve the farm worker community about the availability of services from the ALRB. Highlights include:

- Multiple community fairs and outreach events attended by over 4400 farmworkers including the *Feria Campesina* (Farmworkers Fair) in Oxnard, CA and the *Día del Trabajador Agrícola* (Day of the Farm Worker) in Greenfield, CA.
- Numerous events held by the Mexican Consulate attended by over 2100 farmworkers including *La Semana de los Derechos Laborales* ("Labor Rights Week"), a week long event sponsored by the Mexican Consulate that takes place throughout the State of California. ALRB staff presented at the event kick-off in Sacramento, CA and throughout the state. In addition, ALRB staff attended *Consulado Movil* events to highlight a mobile "office" that travels throughout rural areas in California to bring the Consulate's services to communities that do not have easy access to Consulate offices in urban areas. ALRB staff arranged to accompany *Consulado Movil* staff on a number of outreach excursions.
- ALRB staff met with the "migrant unit" of California Rural Legal Assistance (CRLA) in Salinas to establish an outreach partnership and plan cross-training to CRLA staff about the ALRA.
- ALRB staff attended the opening of several labor camps housing over 180 families who are working on the seasonal harvest. Locations included the Atwater Labor Camp, Merced Labor Camp, the Henry Miller Labor Camp and the Arvin Labor Camp.

Board Ordered Remedies

Cases Released for Compliance

In FY 2009-10, the Board released for compliance three (3) cases: Mushroom Farms, 07-CE-60-SAL, et al., Vincent B. Zaninovich & Sons, 06-CE-62-VI, et al., and Lassen Dairy, Inc., dba Meritage Dairy, 07-CE-37-VI.

Monetary Remedies

The following amounts were paid to farmworkers as a result of findings of liability in unfair labor practice cases or as a result of settlement agreements:

Fifty-one (51) workers were paid a net sum of \$135,721.13.

Non Monetary Remedies

In cases where a violation is found, the Board generally orders notice remedies in addition to monetary awards. A notice remedy requires the employer to post, mail and/or read a prepared notice to all agricultural employees so they can become aware of the outcome of the case. The number of agricultural employees subject to the Board's non-monetary remedies is 2283.

Agricultural Employee Relief Fund (Fund or AERF)

The AERF legislation took effect January 1, 2002. The administration of the AERF is governed by California Code of Regulations, title 8, section 20299. The Fund works as follows: where the Board has ordered monetary relief but employees cannot be located for two years after collection of monies on their behalf, those monies will go into the Fund and are distributed to employees in other cases where collection of the full amount owed to them is not possible.

Pursuant to Regulation 20299, allocations are made annually within ninety (90) days of the close of the fiscal year. In 2009, \$9,017 was allocated to nine employees who were eligible for pay out from the Fund. Since the inception of the Fund, \$283,885 has been allocated to those eligible for payouts and \$248,743 actually has been disbursed to eligible claimants.