

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

April 18, 2007

Time: 10:00 a.m.
Members Present: Chairwoman Raymundo, Members Shiroma and Rivera-Hernandez

Members Absent: None.
Staff Present: General Counsel Lee, Assistant General Counsel Blanco, Executive Secretary Barbosa, Board Counsels Wender and Murray; Analyst Massie, Legal Typist Sakauye
Staff Absent: Board Counsel Heyck
Others Present: Steven Guida; Richard Markuson

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for April 4, 2007 were approved 3-0 with minor revisions.
- 2. Public Comments:** None
- 3. Chair Budget Report:** Chairwoman Shiroma reported on the Senate Budget Committee prehearing held on April 17. There are no budgetary issues at this time.
- 4. General Counsel Report:** Several charges have been filed in Salinas and Visalia. A Petition for Writ of Mandate was filed in Tuls Cattle Ranch in the Fifth District of the California Courts of Appeals.
- 5. Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):
None.

PENDING ELECTION MATTERS:

Artesia Dairy, 06-RC-1-VI

On February 28, 2006, the United Farm Workers filed a representation petition with the Visalia Regional Office seeking an election amongst the agricultural employees of Artesia Dairy Farms LLC in Corcoran, CA. The employer is a dairy with approximately 45 employees. The election was held on March 7, 2006. The tally of ballots showed the following:

UFW	25
No Union	24
Unresolved Challenged Ballots	<u>15</u>
Total	64

As the number of challenged ballots was outcome determinative, the Regional Director conducted an investigation to determine whether the challenges should be sustained or overruled. Election objections, if any, were due on March 14. No objections were filed. The Regional Director issued his Challenged Ballot Report on June 12, 2006. On June 22, 2006 the employer filed its exceptions to the Regional Director's report. The Board's decision in Artesia Dairy issued August 2, 2006. A telephone conference was held October 17, 2006. The hearing on challenged ballots was held from October 24-27, 2006 in Visalia, CA. The hearing transcripts were received on November 20, 2006 and the parties' post-hearing briefs were received December 22, 2006. The IHE's decision issued January 10, 2007. Exceptions were due January 23, 2007. On January 18, 2006 the petitioner requested an extension of time to file exceptions to the IHE's decision that was partially granted. The UFW and employer both filed their exceptions on February 6, 2007. Both parties also filed their replies on February 16, 2007. The matter is now before the board for decision.

Valley View Farms, 06-RD-3-VI

On July 10, 2006, agricultural employee Sergio Ozuna Lopez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Valley View Farms. The employer operates a dairy in Hanford, CA with approximately 41 employees. The election was held on July 17, 2006 and yielded the following results:

UFCW	17
No union	16
Unresolved Challenged Ballots	<u>5</u>
Total	38

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The Regional Director issued his challenged ballot report on September 5, 2006. Exceptions, if any, were due on September 15, 2006. No exceptions were filed. The Executive Secretary's issued his order making the Regional Director's Challenged Ballot Report final and directing that the ballots be processed as outlined in the report. The election case was originally to be held in abeyance pending resolution of three pending unfair labor practice (ULP) charges relating to three of the individuals whose ballots were challenged. On July 24, 2006, the employer filed objections to the election which also will be held in abeyance pending resolution of the three ULP charges. On December 5, 2006, the Executive Secretary received a notification from the Union's counsel indicating that the parties (the employer and union) had participated in the Board's mandatory mediation and conciliation process and had reached a collective bargaining agreement. As part of that agreement, the union agreed to withdraw all of its unfair labor practices, including presumably the three ULPs that were being investigated and that impacted on the election. Since the agreement, the union has withdrawn and/or dismissed the three charges in question. All that remains is the resolution of the single challenge inquiring whether Sanchez was eligible for Workers Compensation and, if so, whether there was a position he could return to. In accordance with his report on challenged ballot, the matter will be set for investigative hearing. On December 18, 2006 the Regional Director issued a supplemental challenged ballot report recommending that the ballots of three challenged voters not be opened and counted, and that the

remaining challenged ballot be set for hearing. Exceptions are due December 26, 2006. No exceptions were filed and the Executive Secretary issued an order on January 10, 2007 making the report final and informing the parties that an investigative hearing will be held at a time and place to be noticed by the Executive Secretary. On March 30, 2007, the regional director issued a second supplemental challenged ballot report. Exceptions are due within 5 days, i.e., April 9, 2007. As no exceptions were filed, the Executive Secretary issued an order making the supplemental challenged ballot report final on April 12, 2007. On April 13, 2007 the regional director issued a final tally showing the following results:

UFCW	17
No union	16
Unresolved Challenged Ballots	<u>0</u>
Total	33

The Executive Secretary will now proceed to screen the election objections filed by the employer.

Henry A. Garcia Dairy, 07-RC-1-VI

On March 9, 2007, UFCW International Union, Local 5, filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Henry A. Garcia Dairy. The employer is a dairy located in Tulare with 21 employees.

An election was held on Friday, March 16, 2007. Six votes were cast without challenge and there are eleven unresolved challenged ballots. After the election, the Regional Director decided to impound the six unchallenged ballots pending resolution of the challenged ballots. On March 23, 2007 the employer filed objections to the election. The matter is pending resolution of the unresolved unfair labor practice charges affecting the election and screening of the employer's election objections.

Excelsior Farming, 07-RD-2-VI

On April 17, 2007, agricultural employee Humberto Suarez Garcia filed a decertification petition with the Visalia Regional Office seeking the ouster of the exclusive representative UFW. The employer is located in Hanford and grows tree fruit. The bargaining unit consists of all the agricultural employees in the state of California. The approximate size of the workforce is 400. Assuming all statutory prerequisites are met, an election would be held on or about April 24, 2007. The petition is currently under investigation.

COMPLAINT REPORTS

ONE NEW COMPLAINTS ISSUED:

Vincent B. Zaninovich & Sons, 06-CE-62-VI

The regional director issued the complaint on April 6, 2007. According to the complaint, the employer allegedly threaten, interrogated, discharged and refused to rehire employees because of their union and/or protected concerted activity.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Hess Collection Winery, 01-CE-08-SAL

A fifth prehearing conference was held on April 4, 2007. The parties informed the judge that the matter was fully resolved. The judge allowed the parties to April 30th to reduce their agreement to writing so the hearing could be taken off calendar.

HEARINGS HELD:

None.

ONE CASE ON CALENDAR:

Hess Collection Winery, 01-CE-08-SAL

Hearing scheduled for May 8, 2007.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

Artesia Dairy, 06-RC-1-VI

IHE decision issued January 10, 2007

Exceptions received February 6, 2007

Replies received February 16, 2007

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Bayou Vista Dairy and Bayou Vista Farms West, 2006-MMC-01

The Board issued an order directing the parties to mandatory mediation and conciliation on October 19, 2006. (Admin Order No. 2006-09) The parties have been sent a list of mediators but they have not chosen a mediator yet. UFCW president Pete Maturino informed the agency that the owner has sold all his cattle and is terminating the dairy as of February 28, 2007. The new owners are also a dairy. Mr. Maturino is stilling waiting for information from the present owners to begin effects bargaining. This matter will be removed from the report as the MMC procedures are no longer being pursued.

D'Arrigo Bros. Co. of California, 2007-MMC-01

On January 11, 2007, the UFW filed a declaration with the ALRB pursuant to Labor Code section 1164 et seq. and Board Regulation 20400 indicating that the UFW and D'Arrigo Bros. Co. of California have failed to reach a collective bargaining agreement and requesting that the Board issue an order directing the parties to mandatory mediation and conciliation (MMC). On January 17, 2007, the D'Arrigo timely filed an answer to the UFW's declaration pursuant to section 20401 of the Board's regulations. On January 24, 2007 the Board issued its decision in D'Arrigo Bros. Co., 33 ALRB No. 1 (2007-MMC-01) directing the parties to mandatory mediation and conciliation. On January 9, 2007 the parties selected C. Allen Pool as the mediator in this case. On February 5, 2007, the UFW filed its identification of issues in dispute. On February 8, 2007, the employer filed its motion to strike the UFW's identification of issues in dispute. On February 9, 2007, the UFW filed its opposition to the employer's motion to strike. On February 14, 2007, the Board referred the initial motion and opposition to the assigned mediator for ruling. (Admin. Order No. 2007-01.) On March 2, 2007 the mediator denied the employer's motion to strike the union's identification of issues. The mediation will begin on May 10, 2007.

COURT LITIGATION:**Western Growers Association, et al., 03AS00987**

This lawsuit, which challenges the constitutionality of the mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was originally filed on February 24, 2002 in the Sacramento County Superior Court. Initially the court ruled that the matter was not ripe for adjudication. Following the issuance of a decision fixing the terms of a collective bargaining agreement in the Hess Collection Winery matter (see below), the plaintiffs filed an amended complaint in the Sacramento County Superior Court. On December 22, 2003, a demurrer and request for a stay of the matter pending the resolution of a related case (Hess) was filed on behalf of the Board. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing. As the issues raised in this lawsuit were decided adversely to WGA in the Hess Collection Winery v. ALRB case, the petitioner has voluntarily requested that the matter be dismissed with prejudice. As this matter is now fully revolved, it will be removed from this report.

D'Arrigo Bros. of California, D048904

On June 29, 2006 the petitioner D'Arrigo Bros. of California filed a petition for writ of review with the Fourth Appellate District, Division One. On July 7, 2006 the court sent a letter to the parties directing that the record be prepared within ten (10) of the notice. On July 11, 2006, the ALRB filed a motion for extension of time to file the certified record to August 16, 2006, which was granted by the court on July 18, 2006. The record was filed with the court on August 16, 2006. The petitioner filed its opening brief on December 14, 2006. The Board filed its response brief on February 21, 2007. The reply brief is due March 19, 2007. On March 2, 2007, the petitioner filed an application for an order extending time to file reply brief to April 9, 2007 that was granted by the court. The reply brief was filed April 9, 2007. On April 11, 2007 the court issued a writ of review and requested that the board file the record in this case. On April 16, 2007, the Executive Secretary informed the court that the record had been filed on August 16, 2006. The matter is pending oral argument or decision.

6. Special:

Legislation (Senior Board Counsel Wender) –

SB 180 (Migden)—Labor Representatives: Elections

This bill, as amended on April 9, would amend the Agricultural Labor Relations Act (Labor Code sec. 1140, et seq.) to (1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; (2) create penalties, under specified circumstances, for the commission of unfair labor practices; and (3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief. On April 17, 2007, the bill was withdrawn from committee and re-referred to the Committee on Rules.

AB 309 (Tran)—State boards and commissions: salaries: suspension.

This bill would specify that members appointed to specified state boards and commissions shall receive no salary for the 2007-08, 2008-09, and 2009-10 fiscal years, except that they may receive a per diem payment set pursuant to these provisions during that time. On April 12, the bill was amended to drop from the specified list of affected boards and commissions the Board of Prison Terms, the Narcotic Addict Evaluation Authority, and the Youth Authority Board. On April 16, 2007, the bill was referred to the Committee on Business and Professions.

Case Statistics Tracking System and Web Site Updates (Board Member Shiroma, Analyst Massie) – Steve Guida presented samples of unfair labor practice reports. The Board reviewed the reports and discussed capturing additional information for reporting purposes. Mr. Guida will incorporate additional fields in the database.

Association of Labor Relations Agencies Membership Fees (Executive Secretary Barbosa)

The Association of Labor Relations Agencies is raising its membership dues from \$250 to \$400 beginning June 1, 2007. The Board approved the continuation of membership in the organization.

7. Roundtable:

A Legislative Reception will be held on May 1, 2007 from 5:30-7:30 PM celebrating the California Agriculture Industry in the State Capitol Basement Rotunda sponsored by the California Women for Agriculture.

The ALRB is invited to a retirement reception in honor of Victoria E. Aguayo, NLRB Regional Director, Region 21 on Friday, May 11, 2007 from 6 – 9 p.m. at the Wilshire Grand Hotel, Pacific Ballroom, 930 Wilshire Boulevard, Los Angeles, California

The ALRB's budget hearing before the Senate Budget and Fiscal Review, Subcommittee No. 2 is scheduled for next Monday, April 23, 2007 in Room 113 at 1 p.m. or upon adjournment of session.

A finalized draft of a memorandum of understanding between the ALRB and EEOC is being reviewed. Cross-training of staff will begin in the ALRB Salinas Region. The EEOC has indicated an interest in entering into MOUs with other members of the LWDA.

The next Board meeting is scheduled for May 2, 2007.

The public meeting adjourned at 12:10 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.