

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 16, 2007

Time: 10:00 a.m.
Members Present: Chairwoman Raymundo, Members Shiroma and Rivera-Hernandez
Members Absent: None.
Staff Present: Board Counsels Wender, Heyck and Murray;
Staff Absent: Analyst Massie, Executive Secretary Barbosa
Others Present: Freddie Sanchez, UFCW, Local 101

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for May 2, 2007 were approved 3-0.
- 2. Public Comments:** Freddie Sanchez representing UFCW, Local 101 introduced himself and gave the Board some background about his lengthy career. He informed the Board that he may attend Board meetings in the future.
- 3. Chair Budget Report:** Chairwoman Raymundo reported on the Labor Agency meeting she attended on May 15, 2007. The proposed budget for FY 07/08 was discussed, and there was a lengthy discussion of Senate Bill 180. The Labor Agency requested concept papers from any department seeking a budget increase in FY 08/09. Chairwoman Raymundo also discussed possible fiscal preparations for large elections and increased workload during peak seasons.
- 4. General Counsel Report:** none.
- 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. On April 20, 2007 the Board issued its decision in this matter sustaining the challenges as to ten (10) employees and overruling the challenges as to three (3) employees. The opening and counting of the ballots was held on May 14, 2007 and resulted in following final tally:

UFW	27
No Union	25
Unresolved Challenged Ballot	0
Total	52

As neither party had filed election objections and the UFW having received a majority vote, the Executive Secretary issued a certification of representative on May 14, 2007. This matter is now fully resolved and will be removed from the election report.

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

On May 4, 2007 the Executive Secretary issued his order on election objections. A hearing is scheduled for June 18, 2007. The request for review, if any, is due May 14, 2007. None was timely filed.

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.

COMPLAINT REPORTS

ONE NEW COMPLAINT ISSUED:

Pacific Coast Mushrooms, LLC, 06-CE-1-SAL

On May 7, 2007

The complaint alleges that the employer withdrew recognition of the union and has refused to bargain in good faith.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

ONE CASES ON CALENDAR:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

None.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

Paramount Farming Company, Case No. 05-CE-02-VI

The Respondent and General Counsel reached an informal settlement agreement resolving the allegations in Case No. 05-CE-02-VI.

Tuls Cattle Ranch Company I, et al., 07-CE-7-VI

The parties entered into a fully executed informal bilateral settlement agreement resolving the allegations in the complaint. The matter was taken off calendar on May 10, 2007.

Hess Collection Winery, 01-CE-08-SAL

The Respondent and General Counsel reached an informal settlement agreement resolving the allegations in Case No. 01-CE-08-SAL. An order taking the case off calendar is issuing today.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

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. On April 27, 2007 the employer filed a request for a 30-day continuance of commencement of the mandatory mediation process that was denied by the Board on May 3, 2007. The mediation commenced on May 10, 2007 and is in progress.

COURT LITIGATION:

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.

D'Arrigo Bros of California, USDC, Southern District, 07CV707-BEN(CAB)

The Employer filed a complaint with the United States District Court, Southern District seeking to enjoin the mandatory mediation process on the basis that such process violated the provisions of ERISA. The Board filed a motion to dismiss on May 2, 2007. The UFW filed a motion to intervene and answer to the complaint on May 3, 2007. On May 9, 2007, D'Arrigo filed a motion for Preliminary Injunction and an Ex Parte Application to Shorten Time to hear the motion. The Court has yet to respond to the application. The hearing on the Board's motion to dismiss is scheduled for June 11, 2007.

ALRB v. Tulare County Superior Court

Civil No. F052611 (Tuls Cattle Ranch Company I)

On May 3, 2007, the Fifth District Court of Appeal denied the General Counsel's request for a writ of mandate. By the petition, the General Counsel sought to have the Court of Appeal reverse the Superior Court's denial of injunctive relief in a case involving the Tuls Cattle Ranch Companies. The agency sought injunctive relief after the employer allegedly committed various unfair labor practices, including dismissing the employee most prominently involved in a union organizing campaign. Following this ruling, the parties met and were able to reach a settlement of all pending claims. This matter is now fully resolved.

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 (Lab. Code § 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. On April 19, 2007, the bill re-referred to the Committee on Labor & Industrial Relations and the Committee on Rules and set for hearing on April 25, 2007. On April 30, 2007, the bill was passed out of the Committee on Labor & Industrial Relations (3-2 vote) as amended, but first to be amended and re-referred to the Committee on Rules. The bill was amended on May 1, 2007 to eliminate the proposed provisions that would have provided for liquidated damages for specified ULPs and would have set a minimum bargaining makewhole award. On May 3, the bill was re-referred to the Committee on Appropriations. On May 14, the bill was heard in committee and passed as amended by a 10-6 vote.

The Labor and Workforce Development Agency has taken a position on this bill. The Agricultural Labor Relations Board has historically not taken positions on legislation and does not take a position on this bill. The Board will provide analysis upon request. The Labor and Workforce Development Agency requested and was provided an analysis of this bill.

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) – Executive Secretary Barbosa met with Consultant Steve Guida to refine the database. Phase 1 of the case statistic tracking system will be completed shortly and the website redesign will commence within the next couple of weeks. Jeannette Barr is working on the RFO for Phase II of the tracking system.

7. Personnel –nothing new to report.

8. Roundtable:

The Board approved a recommendation from Analyst Massie and Stephen Wicklund of Capdata to obtain four new servers for headquarters and the regional offices. The cost would be approximately \$16,000.00. Analyst Massie is also researching the purchase of video teleconferencing equipment.

The public meeting adjourned at 11:10 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.