

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**August 15, 2007**

Time: 10:00 a.m.  
Members Present: Chairwoman Raymundo, Members Shiroma and Rivera-Hernandez  
(telephone conference)  
Members Absent: None.  
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Analyst  
Massie and Accounting Officer Davis  
Others Present: Freddie Sanchez, UFCW; and Francis Lowe, Office of the Senate  
President Pro Tem

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for June 20 and 22, and July 6, 11, 24 and 31 were approved 3-0.
2. **Public Comments:** None.
3. **Chair Budget Report:** Accounting Officer Davis presented a general review of expenditures for the previous fiscal year, which showed that the ALRB met all of its fiscal requirements. She will present a report on a monthly basis. Chairwoman Raymundo reported on the LWDA meeting. Agency was informed about the possibility of ALRB elections occurring prior to an approved budget and requested they be informed if such a situation occurs. John Rea has been appointed to the position of General Counsel for the Labor and Workforce Development Agency (LWDA). John Duncan has been appointed to the position of Director of the Department of Industrial Relations (DIR).
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:**

The Visalia Regional Director is anticipating the filing of a new representation petition by the UFCW to be filed sometime this week concerning a dairy with an approximate workforce of 50 employees.

### **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 setting and dismissing election objections. The request for review, if any, was due May 14, 2007. No request was filed. The hearing on election objection was held June 18, 2007. The Union and Employer filed their post-hearing briefs on July 27, 2007. On August 10, 2007 the IHE issued his decision in this matter. Exceptions are due August 24, 2007. Replies, if any, are due September 4, 2007.

**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. On June 8, the Regional Director issued his challenged ballot report. On June 19, the employer filed exceptions to the report. On August 3, 2007 the Board issued its decision on challenged ballots. The Board overruled the challenge to one ballot, sustained the challenge to eight (8) ballots and set two (2) ballots for hearing if they are outcome determinative. On August 13, 2007 the Regional Director opened and counted the ballots issued the following tally:

UFCW, Local 5	5
No Union	1
Unresolved Challenged Ballots	<u>2</u>
Total	8

A majority of the valid ballots have been cast for the Union and the two remaining unresolved challenged ballots are not outcome determinative and will not be processed. On August 14, 2007, the Executive Secretary issued his order dismissing election objections. The request for review is due August 24, 2007.

**Jim Nace Dairy, 07-RD-3-VI**

On May 25, 2007 agricultural employee Raul Camarena Lopez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 5, at Jim Nace Dairy. The employer operates a dairy in Tipton, CA with approximately 18 employees. The election was held on June 1, 2007 with the following results:

UFCW	6
No union	11
Unresolved Challenged Ballots	<u>0</u>
Total	17

Election objections, if any, were due June 8, 2007. On June 7, 2007 UFCW filed objections to the election. On June 15, the Acting Executive Secretary issued an order setting two objections for hearing and dismissing the remaining objection. The hearing is scheduled for August 20, 2007. Any request for review of the partial dismissal was due June 25, 2007. No request for review was filed.

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

On June 18, Roberto Parra filed a decertification petition seeking to remove the United Farm Workers of America as the exclusive bargaining representative of Gallo's agricultural employees in Sonoma County. The petition lists the approximate number of employees in the unit as 400. The election was held on June 25, 2007 and yielded the following results:

UFW	95
No union	125
Unresolved Challenged Ballots	<u>12</u>
Total	232

Election objections, if any, are due July 2, 2007. On July 2, 2007 the UFW filed objections to the election. The objections will be held in abeyance pending resolution of ULPs mirroring the election objections.

#### **Rocking S Dairy, 06-RC-2-VI**

On July 6, 2007 the United Food & Commercial Workers, Local 5, filed an election petition with the Visalia Regional Office seeking to organize the agricultural employees of Rocking S Dairy. The employer is a dairy located in Modesto with approximately 38 employees. An election was held on Friday July 13, 2007 with the following results:

UFCW, Local 5	36
No Union	2
Unresolved Challenged Ballots	<u>1</u>
Total	39

Election objections, if any, were due on July 20, 2007. None were filed. On July 23, 2007 the Executive Secretary certified the United Food & Commercial Workers, Local 5 as the collective bargaining representative of Rocking S. Dairy's agricultural employees. This matter is now resolved and will be removed from this report.

**Richard's Grove & Saralee's Vineyard, Inc., 07-RD-2-SAL**

On July 19, 2007 agricultural employee Victorino Velasquez filed a decertification petition with the Salinas Regional Office seeking an election to oust the incumbent collective bargaining representative, the United Farm Workers. Richard's Grove & Saralee's Vineyard, Inc. is a vineyard located in Windsor that is engaged in the growing of wine grapes. The petition seeks a bargaining unit consisting of all the agricultural employees in the State of California. An election was held July 26, 2007 with the following results:

No Union	39
Union	6
Unresolved Challenged Ballots	<u>3</u>
Total	48

The no union choice received a majority vote so the unresolved challenged ballots will not be resolved as they are not outcome determinative. On August 2, 2007 the UFW filed objections to the election. The objections will be held in abeyance pending resolution of an ULP charge that mirrors the allegations in the election objection.

**COMPLAINT REPORTS**

**THREE NEW COMPLAINT ISSUED:**

**Santa Rosa Berry Farms, LLC, 07-CE-22-VI**

On June 8, 2007 the Visalia Regional Director issued a complaint against Santa Rosa Berry Farms alleging that the employer had discharged a single employee because he engaged in protected concerted activity (i.e., various workers met with a supervisor to request a wage increase and the leader of the group was allegedly discharged).

**Bos Farms, 06-CE-57-VI**

On June 8, 2007 the Visalia Regional Director issued an order consolidating the compliance proceeding with an unfair labor practice proceeding. A first amended backpay specification issued August 6, 2007.

**California Valley Land Co DBA Woolf Enterprises and Woolf Farming, 06-CE-28-VI**

On July 2, 2007 the Visalia Regional Director issued a complaint against California Valley Land Co DBA Woolf Enterprises and Woolf Farming alleging that the employer had fired an employee and failed and refused to reinstate him because he engaged in protected concerted activity.

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED**

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

Prehearing: August 27, 2007

Hearing: September 24, 2007

**HEARINGS HELD:**

None.

**TWO CASES ON CALENDAR:**

**Jim Nace Dairy, 07-RD-3-VI**

Hearing: August 20, 2007

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

Prehearing: August 27, 2007

Hearing: September 24, 2007

**CASES PENDING ALJ/IHE DECISION:**

None.

**ALJ/IHE DECISIONS ISSUED:**

**Valley View Farms, 06-RD-3-VI**

**CASES PENDING EXCEPTIONS OR REPLY:**

**Valley View Farms, 06-RD-3-VI**

**CASES PENDING BOARD DECISION:**

None.

**CASES PENDING SETTLEMENT:**

None.

**CASES SETTLED OR RESOLVED:**

**Tuls Cattle Ranch Co. I, 07-CE-7-VI**

The Regional Director withdrew the complaint and dismissed the charges as the Respondents have reached an informal bilateral settlement agreement that has now being full complied with.

**Aguiar Dairy, 05-CE-35-VI**

This matter was taken off calendar on August 2, 2007 as the parties had reached an informal bilateral settlement agreement.

**Scurich Bros., Inc., 05-CE-25-SAL**

The Regional Director closed the case as all the terms and conditions of the informal settlement agreement had been complied with.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:****Henry A. Garcia Dairy, 07-RC-1-VI**

On August 3, 2007 the Board issued its decision on challenged ballots. The Board overruled the challenge to one ballot, sustained the challenge to eight (8) ballots and set two (2) ballots for hearing if they are outcome determinative.

**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. On June 2, 2007 the parties requested that the 30-day timeline for the MMC process be extended to July 9, 2007 that was approved by the mediator.

**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 hearing on the Board's motion to dismiss is scheduled for June 11, 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 denied the ex parte application on May 17, 2007. On May 25, D'Arrigo filed its Opposition to the Motion to Dismiss. On May 25, the Board filed its Reply to Opposition to Motion to Dismiss. On May 25, D'Arrigo filed a Motion for a Preliminary Injunction. The hearing on that motion was scheduled for June 25. On June 7, 2007 the court granted the ALRB's motion to dismiss and denied the motion for a preliminary injunction as moot. No appeal was sought before the 9<sup>th</sup> Circuit so this matter is now final.

## **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. On May 17, the bill was amended to extend the time periods for Board evaluation of the petition and for the Employer response. On May 21, the bill passed the Senate by a 24-15 vote and was read the first time in the Assembly. On June 4, the bill was referred to the Labor & Employment Committee.

SB 180 was amended on June 7, 2007. The substantive amendments provide that 1) the person witnessing the signature sign a statement (to be contained on the card), under penalty of perjury, that he or she witnessed the signing and that to the best of their knowledge, information, and belief the employee was not intimidated, threatened, or coerced in any way or paid in exchange for signing the card; 2) the Board shall maintain the confidentiality of the card in the same manner as ballots cast in a regular election; 3) the Board will have 5 days to evaluate the sufficiency of the cards, and that this administrative determination is not reviewable; 4) if the Board determines that the showing is insufficient, it shall return the invalid cards with an explanation of their deficiencies, and allow the labor organization 30 days to submit additional cards; 5) once a labor organization files a majority sign up petition no other such petitions regarding the same employer shall be considered by the Board until it determines whether or not to certify the labor organization filing the first petition.

On June 13, the bill passed out of the Labor & Employment Comm. and was re-referred to the Comm. on Approps. On July 12, the bill passed to the Senate by a vote of 46-33.

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 reported the case tracking system is in place. Phase 2 of the system is underway and includes development of a database for time tracking, fine-tuning the case tracking

database, inventory control database, and backpay, makewhole and AERF databases. Recommend Board and GC receive monthly report on elections and ULPs. Starting October 2, 2007, Administrative Assistant Justice will circulate monthly ULP reports and Legal Secretary Sakauye will circulate monthly election reports. The reports will be due the day before each Board meeting. Inputting of data by the regional offices will be phased in at a later date. Consultant Guida will be meeting with staff regarding the website redesign project and anticipates a test launch of the website in early September.

**AERF** – The 2007 allocation from the Agricultural Employees Relief Fund (Fund) is \$25,065, which will be distributed to 12 newly eligible claimants and to the 232 claimants from last year who are in their second and final year of eligibility. The 2006 allocation was \$191, 307, of which approximately 90% has been distributed.

7. **Personnel** – Lytamarie Winston was hired as the Business Services Officer on August 1, 2007. Applications for the Board Counsel I/II are being reviewed and interviews will be scheduled soon.

#### 8. **Roundtable** –

Comcast Local Edition, 5-minute, studio-based informational program, has invited Member Shiroma to appear as a guest on their program to discuss relevant ALRB topics.

Making Strides Against Breast Cancer Kickoff Breakfast is scheduled for August 23, 2007 at the University Union Ballroom at California State University, Sacramento.

The Regional Directors' Quarterly Meeting will be held August 22, 2007 via telephone conference.

The State Employee Start! Heart Walk and Wellness Fair is scheduled for September 18 at the State Capitol and is intended to raise health awareness and help fight heart disease and stroke.

The Board and General Counsel approved the interagency agreement with the NLRB that would provide utilization of NLRB personnel in ALRB conducted elections were necessary.

A meeting is scheduled for 10:30 a.m. August 30 with AT&T regarding installation of video conferencing equipment.

The next Board meeting is scheduled for October 3, 2007.

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

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**