

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 3, 2007

Time: 10:00 a.m.
Members Present: Chairwoman Raymundo (telephone conference), Members Shiroma and Rivera-Hernandez
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, General Counsel Lee, and Legal Secretary Sakauye
Others Present: Freddie Sanchez, UFCW

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for August 15, 22, and 31, 2007 were approved 3-0.
2. **Public Comments:** None.
3. **Chair Budget Report:** Chairwoman Raymundo reported that the ALRB will have no budget cuts for the current fiscal year.
4. **General Counsel Report:** General Counsel Lee reported that the regional offices are busy. New charges, the majority being charges against employers, have been filed in the Visalia and Salinas regional offices. General Counsel Lee had two prepared reports on the activity of Unfair Labor Practice Charges for the month of August 2007. Copies of the reports will be provided to the Board.
5. **Executive Officer Report:**

The Executive Secretary has prepared two reports for the Board's consideration. One, prepared from the data in our current case tracking system and, two, an informal report updated daily and prepared by the Executive Secretary based on mail received each day.

ELECTION REPORT

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

PENDING ELECTION MATTERS:

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 were due August 24, 2007. As neither party filed exceptions to the IHE Decision, the Executive Secretary issued an order making the IHE's decision final and re-affirming the UFCW Local 5's status as the exclusive bargaining representative. This matter is now fully resolved and will be removed from this report.

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 CB	<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

the election objections. As the Employer did not seek review of the Executive Secretary's ruling, the Executive Secretary issued a certification of representative on August 31, 2007. This matter is now fully resolved and will be removed from this report.

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. Any request for review of the partial dismissal was due June 25, 2007. No request for review was filed. The hearing on objections was held on August 20, 2007. The Employer's post-hearing brief was filed September 24, 2007. Should the Union wish to reply, it will file a request with the Executive Secretary's office. The IHE's decision will follow.

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 ULP's mirroring the election objections.

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.

Lassen Dairy dba Meritage Dairy, 07-RC-4-VI

On September 4, 2007 UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Lassen Dairy dba Meritage Dairy. The employer is a dairy located in Bakersfield with approximately 25 employees. An election was held on September 11, 2007 with the following results:

UFCW	17
No Union	15
Unresolved Challenged Ballots	<u>6</u>
Total	38

As the unresolved challenged ballots are outcome determinative, the Regional Director will proceed to investigate and issue a report on the six (6) unresolved challenged ballots. On September 18, 2007 the employer filed objections to the election. The union did not file any objections. The investigation of unresolved challenged ballots is ongoing and the regional director may have a partial resolution by next week.

COMPLAINT REPORTS

NO NEW COMPLAINTS ISSUED:

None.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Pacific Coast Mushrooms, 06-CE-1-SAL

Prehearing October 18, 2007

Hearing set for December 10, 2007

C. Mondavi & Sons dba Charles Krug, 06-CE-40-SAL

The region has requested that this matter be set for hearing and the hearing office is making the necessary arrangements. We anticipate setting the case for hearing by next week.

HEARINGS HELD:

Jim Nace Dairy, 07-RD-3-VI (August 20, 2007)

Vincent B. Zaninovich & Sons, 06-CE-62-VI (September 24, 2007 to October 2, 2007)

ONE CASE ON CALENDAR:

Pacific Coast Mushrooms, 06-CE-1-SAL

Prehearing October 18, 2007

Hearing set for December 10, 2007

CASES PENDING ALJ/IHE DECISION:

Jim Nace Dairy, 07-RD-3-VI

Hearing: August 20, 2007

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

Prehearing held August 27, 2007

Hearing held September 24 through October 2, 2007

Settlement Conference held September 6 and 7, 2007; As the parties were unable to resolve their differences, this matter proceeded to hearing.

Pending receipt of transcripts and parties post-hearing briefs

ALJ/IHE DECISIONS ISSUED:

Aukeman Farms, 06-CE-35-VI

ALJ issued an order granting General Counsel's motion for order finding allegations of backpay specification to be true. The request for review was due September 20, 2007. None was filed. The matter is now pending the filing of a request for review with the court of appeals or an order from the Executive Secretary releasing this matter for compliance.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

Artesia Dairy, 06-RC-01-VI (33 ALRB No. 3), Technical Refusal to Bargain

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Artesia Dairy, 06-RC-01-VI (33 ALRB No. 3), Technical Refusal to Bargain

BOARD DECISIONS:

D'Arrigo Bros. of California, 33 ALRB No. 5

The Board vacated its decision in 32 ALRB No. 1 as the parties reached a collective bargaining agreement and mutually resolved a number of other pending matters.

Counsel Wender reported that the deadline for the signing of the collective bargaining agreement contract is October 9, 2007.

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. The parties reached a global settlement resolving a number of ulp charges and the pending MMC matter. The agreement also provided for a collective bargaining agreement. This case is fully resolved and will be removed from this report.

COURT LITIGATION

None.

OTHER

On September 24, 2007 David A. Rosenfeld sent the Executive Secretary a renewed request to refer the record in Henry A. Garcia Dairy, Case No. 07-RC-01-VI, to EDD for investigation of possible fraud. The request was forwarded to the Board for response.

The Board set this matter for discussion on the agenda for the October 17th Board Meeting. An amended October Public Meeting Notice will be sent to the public mailing list noting this addition to the agenda.

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. The bill passed out of committee on June 27, but a 11-5 vote. On July 12, the bill passed the Assembly and was sent back to the Senate. On August 27, the Senate concurred in the Assembly amendments. On September 5, the bill was sent to the Governor.

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.

SB 650 (Migden) Labor Representatives: Elections.

This bill, the product of a “gut and amend” in the Assembly on September 6, is identical to SB 180, but has a sunset date of January 1, 2013. The bill passed the Assembly on September 10, and the Senate concurred in the amendments on September 12. The bill was sent to the Governor on September 20.

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. On April 17, the bill failed passage in the committee. Reconsideration was granted, but there has been no subsequent action on the bill.

Case Statistics Tracking System and Web Site Updates- Executive Secretary Barbosa circulated election reports generated from the case tracking system to the Board Members and General Counsel on October 2, 2007. The Board will review the reports to see if any modification is required. Board Member Shiroma announced that a Beta Site link has been added to the current ALRB website to allow a preview of the new redesigned website. Chairwoman Raymundo reported that Agency would like information regarding recently conducted elections included on the website in the future.

Media Relations – Member Rivera-Hernandez requested that when the ALRB receives requests from reporters for information, that the ALRB take a pro-active role. This would include inquiring about the article topic to ensure all available and necessary information is given and asking the publish date of the article if the information is available.

2007/08 Agricultural Employee Relief Fund (AERF) - Counsel Wender reported that approximately 90% of the approximately \$191,000 available for distribution in the 2006 allocation has been distributed to 177 of 232 eligible claimants or their heirs. Of the approximately \$25,000 available for the 2007 allocation, \$16,328 has been distributed to 161 of the 242 eligible claimants or their heirs. Distribution to claimants in their second and final year of eligibility who have been successfully located is expected to be completed within the next two weeks.

7. Personnel – The Board will be reviewing applications for the Board Counsel I/II position in Sacramento. The final filing date for the Board Counsel I/II position is October 31, 2007. The Legal Counsel and Assistant General Counsel I/II positions in the Visalia regional office have a final filing date of October 15, 2007.

8. Roundtable –

Roy Gabriel of the California Farm Bureau Federation passed away. He was the Government Affairs Officer for Labor for the California Farm Bureau. He was dedicated to issues affecting agriculture and appeared regularly before the ALRB.

The Agency's kick off for the California State Employee Charitable Campaign (CSECC) is taking place on October 4, 2007 at the Employment Development Department from 12:00 to 1:00 pm. Member Shiroma reported that under CSECC, employees can designate to a specific favorite charity or donate to United Way's Community Impact Fund which focuses on foster youth flourishing, health coverage for kids, keeping kids safe, and turning teens toward success. CSECC forms and brochures will be distributed to Sacramento ALRB employees next week.

General Counsel Lee announced that he has been invited to speak to the Ventura County Agricultural Association.

The next Board meeting is scheduled for October 17, 2007.

The public meeting adjourned at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.