

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 15, 2008

Time: 10:00 a.m.
Members Present: Chairman Almaraz (via telephone), Members Shiroma and Rivera-Hernandez
Staff Present: Executive Secretary Barbosa, Board Counsel Wender, Heyck and Robinson, and Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for September 3, 2008 were approved 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** At the October Labor and Workforce Agency meeting, Secretary Bradshaw stated there would be a significant budget shortfall and a continuing need for state agencies to contain spending. Finance has also issued a budget letter articulating a no growth policy for the 2009-10 budget.
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):

UFW filed NA's at Giumarra Farms, Inc on September 4, 2008, at Giumarra Vineyards Corp on September 4, 2008, at Delano Farms on September 9, 2008, Four Star Fruit Company on September 9, 2008, Fernandez Farms, Inc. on October 9, 2008.

UFCW Local 5 filed NA's at Petrissans Dairy on September 5, 2009 and Jai Alai Dairy on September 5, 2008.

UFCW filed an NO at Jai Alai Dairy on September 11, 2008.

PENDING ELECTION MATTERS:

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

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. On October 5, 2007 the Regional Director dismissed three overlapping charges (07-CE-23-SAL, 07-CE-25-SAL and 07-CE-26-SAL). On October 18, 2007, the UFW filed a request for review of three of the four charges. On November 16, 2008, the General Counsel affirmed the Regional Director's dismissal of the three charges. On February 5, 2008 the Salinas Regional Director and Employer reached an informal settlement agreement resolving the allegations of the remaining charge, 07-CE-24-SAL. The UFW filed a request for review of the agreement. The request for review was denied by the General Counsel on March 10, 2008. On June 6, 2008, the Executive Secretary issued his order on election objections in Gallo Vineyards, Inc., 07-RD-1-SAL. He set one objection for hearing and dismissed the rest. The UFW filed a request for review of the partial dismissal and the case has been transferred to the Board. The hearing on the sole objection originally scheduled for September 9, 2008 was taken off calendar due to the lack of a State budget. The hearing has now been reset for November 11, 2008.

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 were outcome determinative, the Regional Director investigated the challenges and issued his report on challenged ballots on November 9, 2007. The Employer filed exceptions to that report on November 19, 2007. The Board issued its decision on challenged ballots on February 15, 2008. A hearing on the three (3) challenged ballots was held on March 18, 2008. On April 22, 2008 the Investigative Hearing Examiner (IHE) issued his decision in this matter. No exceptions were filed and the Executive Secretary issued his order making the IHE decision final on May 12, 2008. On May 13, 2008 the Regional Director opened and counted the three challenged ballots and issued an amended tally with the following results:

UFCW	17
No Union	18
Unresolved Challenged Ballots	<u>2</u>
Total	37

Since the two remaining challenged ballots are outcome determinative and are dependent on the processing of ULP charges involving the two affected workers, the Executive Secretary has requested that the investigation of charges pertaining to Juan Alberto Tostado and Jose Antonio Barbosa Tostado be expedited so that a final tally can be obtained. A ruling on the objections will follow as soon as a final tally has issued.

Mayflower/Rio Blanco Dairy, 07-RC-7-VI

On December 7, 2007, UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Mayflower Companies et al. The employer is a dairy located in Pixley with approximately 31 employees. The election was held on Friday, December 14, 2007 with the following tally:

UFCW	11
No Union	20
Unresolved Challenged Ballots	<u>1</u>
Total	32

The UFCW filed objections on December 12, 2007. The objections are being held in abeyance pending investigation of overlapping ULPs. On February 4, 2008, the employer filed a motion to dismiss the objections alleging the union had neglected to serve the employer's legal representative. The UFCW filed a reply to the motion on February 12, 2008. On February 15, 2008, the acting Executive Secretary denied the motion to dismiss. The request for review was filed February 28, 2008. On March 7, 2008 the Board denied the employer's request for review. The matter is now pending resolution of the overlapping ULP's. On July 28, 2008, the Regional Director issued a

complaint against Mayflower Companies which included all but one of the allegations in the Union's election objections. The election objections and complaint were consolidated for hearing on October 3, 2008 and the matter is scheduled for hearing January 14, 2009.

L.E. Cooke Company, 08-RD-001-VIS

Agricultural employee Fabian Betanzos filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent representative, UFW, at L.E. Cooke Company. The employer is a bare tree nursery in Visalia with approximately 136 employees. An election was held on April 9, 2008 with the following results:

UFW	53
No Union	57
Unresolved Challenged Ballots	<u>12</u>
Total	122

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. On June 2, 2008, the Visalia Regional Director issued his report on challenged ballots in LE Cooke Company. Of the 12 challenges lodged, the Regional Director recommended that 9 challenges be overruled and the ballots opened and counted and that 3 ballots be held in abeyance to be set for hearing should the ballots be outcome determinative after a revised tally of ballots issues. No request for review was filed; therefore the ES issued an order making the report final on June 24, 2008 and directing the RD to issue an amended or final tally, as appropriate. On June 30, 2008, the Regional Director opened and counted nine (9) challenged ballots and issued a final tally:

UFW	53
No Union	66
Unresolved Challenged Ballots	<u>3</u>
Total	122

The three remaining unresolved challenged ballots are insufficient to affect the outcome of the election. The Union's election objections are currently being screened by the Executive Secretary.

Vista Vineyard Management, LLC, 2008-RD-001-SAL

Agricultural employee Cecilio Samario filed a decertification petition with the Visalia Regional Office on June 11, 2008 seeking to decertify the incumbent representative, UFW, at Vista Vineyard Management, LLC. The employer is a wine grape grower in St. Helena with approximately 65 employees. The election was held on June 18, 2008. The Regional Director impounded the ballots due to pending related unfair labor practice charges. On July 1, 2008 the Acting Executive Secretary issued his order holding the election objections in abeyance pending investigation of six (6) related

unfair labor practice charges. On June 25, 2008, the UFW filed objections to the election. The investigation on the pending charges is continuing.

Bos Farms, 2008-RC-005-VIS

On August 15, 2008, UFCW Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Bos Farms. The employer is a dairy in Tulare with approximately 28 employees. An election was held on August 22, 2008 with the following results:

UFCW Local 5	8
No Union	17
Unresolved Challenged Ballots	<u>1</u>
Total	26

Election objections were due August 29, 2008. As neither party filed objections to the election, the Executive Secretary issued a Certification of Results of Election on September 4, 2008. This matter is now fully resolved and will be removed from this report.

Rocky S Dairy, 2008-RD-02-VIS

On October 2, 2008 agricultural employee Mario Alberto Ibanez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union UFCW Local 5. Rocking S Dairy is a dairy in Modesto with approximately 33 employees. The election was held on Thursday (10/9) and the tally of ballots shows the following results:

No Union	33
UFCW, Local 5	0
Unresolved Challenged Ballots	<u>0</u>
Total	33

Election objections, if any, are due 10/16.

COMPLAINT REPORT

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Five hearings are currently scheduled:

Kirschenman Enterprises, 06-CE-78-VI
Prehearing scheduled September 18, 2008

Order Consolidating Compliance Proceedings with ULP Proceedings and Backpay
Specification issued August 11, 2008
Hearing scheduled October 20, 2008

Gallo Vineyards, Inc., 07-RD-1-SAL
Hearing scheduled November 11, 2008

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI
Prehearing held August 5, 2008
Hearing scheduled for December 2, 2008.

Mayflower/Rio Blanco Dairy, 07-CE-85-VI
Prehearing scheduled November 18, 2008
Hearing scheduled January 17, 2009

The Hess Collection Winery, 99-CE-23-SAL
Prehearing scheduled July 29, 2008
Hearing scheduled February 17, 2009

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

Wolf Farming Co. of CA, 06-CE-28-VI
The post-hearing briefs are due November 1, 2008

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

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

CASES SETTLED OR RESOLVED:

Bos Farms, 06-CE-57-VI

The Regional Director withdrew the complaint and dismissed the case as the Respondent Bos Farms has fully complied with an informal settlement agreement.

UFW (Gallo Vineyards), 03-CL-2-SAL, et al.

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

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

BOARD DECISIONS:

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Boschma & Sons Dairy, 2008-MMC-2

The MMC petition was filed August 21, 2008. The employer did not file a response to the petition. On September 8, 2008 the Board issued an order directing the parties to mandatory mediation and conciliation. On September 10, 2008 the California State Mediation and Conciliation Service issued a list of arbitrators. On October 7, 2008, the California State Mediation and Conciliation Service informed the Executive Secretary that the parties had selected Luella E. Nelson as their mediator/arbitrator.

COURT LITIGATION

Artesia Dairy, Case No. F054590 (33 ALRB No. 6)

Petition for review filed January 25, 2008. ALRB filed certified record on January 7, 2008. Petitioner's opening brief was filed March 13, 2008. The Board's response brief was filed April 16, 2008. The Real Party in Interest filed their brief on April 17, 2008. The petitioner's reply brief was filed May 12, 2008. Oral argument is scheduled for October 16, 2008 at 1:30 p.m.

Vincent B. Zaninovich & Sons, Case No. F055640 (34 ALRB No. 3)

Petition for writ of review was filed July 15, 2008. The certified record was filed July 24, 2008. The petitioner's opening brief was filed August 28, 2008. The Board's reply brief was filed October 2, 2008. The UFW's brief was filed October 3, 2008.

Aukeman Farms, Case No. F055722 (34 ALRB No. 2)

Petition for writ of review was filed July 25, 2008. On July 31, 2008 the court issued an order staying the Board's decision in this case. The certified record was filed on August 4, 2008. The petitioner's opening brief was filed September 9, 2008. The Board's reply brief was filed October 10, 2008. The petitioner's reply brief is due within 25 days from service.

6. Special Projects

- a. Information Technology Update/Case Tracking System — The meeting schedule has been revised to meet every Friday at 10 a.m. Progress continues. Detailed and summary complaint reports are being refined. The inventory tracking system is in place. The PDF conversion project will continue after training on the new systems in the regions. The Case Digest

and its supplements have been consolidated and the digest is now available on the ALRB website. Work on the Trust Fund Module of the system continues.

- b. Financial Integrity And State Managers Accountability Act (FISMA)—
Comprehensive manual updates and revisions are moving along.
- c. The 2007/08 Annual Report was sent to the Governor and Legislature in September and has been uploaded to the ALRB website.

7. Legislation -

AB 2386 (Nunez) Agricultural employees: elections of labor representatives. AB 2386, which is suspected to be a spot bill for card check legislation, was amended on April 2, 2008. As introduced, the bill made nonsubstantive changes to section 1156.3 of the Agricultural Labor Relations Act (ALRA) (Labor Code sec. 1140, et sec.), which governs election petitions. As amended on April 2, the prior language was deleted and in its place were nonsubstantive changes to the Agricultural Employee Relief Fund (AERF) provisions in the ALRA and an added requirement that the status of AERF be included in the annual report (in place of language that had required a single report in 2002). The bill passed the Assembly on May 27, 2008. The bill was referred to the Senate Committee on Appropriations, where it was heard and amended on August 4, 2008. The August 4 amendments retained the provision requiring that the Board include a status report on the AERF in its yearly report to the governor and legislature and added several new provisions relating to other subjects under the ALRA. Specifically, the bill would: 1) add provisions to provide for a “mediated election,” wherein employees may chose the option of selecting a bargaining representative without an election or via a "ballot box election," as an additional alternative to the existing provisions providing only for secret ballot elections; mediators chosen from a list provided by the State Conciliation and Mediation Service would be assigned to each "mediated election" and would be given authority to resolve specified disputes; 2) create a penalty of up to \$20,000 under specified circumstances for the commission of specified unfair labor practices; and 3) add specified unfair labor practices to the existing list of practices that trigger a priority preliminary investigation and the mandatory obligation to seek injunctive relief. At the hearing on August 4, the bill as amended was sent to the suspense file. On August 11, the bill passed out of committee by a 9-6 vote. On August 18, the bill passed the Senate and was sent back to the Assembly for concurrence in the Senate amendments. On August 19, the bill was referred the Assembly Committee on Labor & Employment. On August 21, the committee recommended concurrence in the Senate amendments. However, on August 22, the prior Senate action approving the bill was rescinded and it was sent back to the Senate for further amendments. The August 22 amendments added the authority to ban (for up to 5 years) a representative of a labor organization who engages in

specified misconduct regarding a mediated election. On August 27, the Senate passed the bill as amended by a 21-15 vote. On August 29, the Assembly concurred in the Senate amendments and the bill was sent to enrollment. The bill was enrolled and sent to the Governor at 11:00 a.m. on September 18, 2008. The Governor vetoed the bill on September 30, 2008.

8. Personnel

Update on Student Assistant –In light of the current budgetary situation, the ALRB will continue to reevaluate the search for student assistants.

Hearing Officer Announcement – Applications will be accepted until the position is filled. Interviews will be held during week of October 20, 2008.

Senior Legal Typist - Applications will continue to be accepted until the position is filled.

9. Roundtable:

20th Annual Center for Collaborative Solutions Labor Management Conference – The conference will be held March 18-20, 2009, at Disney's Paradise Pier Hotel in Anaheim. The California State Mediation and Conciliation Service (CSMCS), Federal Mediation and Conciliation Service (FMCS), National Labor Relations Board (NLRB), Public Employment Relations Board (PERB), California Public Employee Relations (CPER), and ALRB are co-sponsors of the event. The next meeting will be held on Tuesday, October 21, to review the conference program.

The public meeting adjourned at 11:58 a.m.

THE BOARD RECESSED BEFORE ENTERING INTO CLOSED SESSION.