

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 17, 2008

Time: 10:00 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary
Barbosa & Analyst Massie; Student Assistants Heather Stamps and
Arturo Macliz
Others: General Counsel Lee

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for December 10, 2008 were approved with minor changes 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** The budget exercise documents were timely submitted to LWDA.
4. **General Counsel Report:** General Counsel Lee reported the 258 charges were pending at beginning of 2008. Currently 215 charges are pending which includes 52 charges filed since the beginning of the year. Thirteen charges have gone to complaint. Regions have been doing an excellent job reducing the number of pending cases.
5. **Executive Officer Report:**

ELECTION REPORT:

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):

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 is now rescheduled for November 11, 2008. The Board’s issued its decision on the UFW request for review of the Executive Secretary’s partial dismissal of election objections on November 7, 2008. The Board affirmed the Executive Secretary’s order dismissing the election objections. The UFW filed a motion for reconsideration of the Board’s decision. The parties filed their response December 1, 2008. The General Counsel moved to intervene in the proceeding and filed a response to the motion for reconsideration that was granted by the Board on December 4, 2008. The matter is now pending decision by the Board. Also, the hearing on the one objection was held November 11-14, 2008. The matter is now pending receipt of the hearing transcripts and filing of post hearing briefs.

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. On October 28, 2008 the Visalia Regional Director issued a complaint in this matter and the case is pending the scheduling of an evidentiary hearing.

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
UCB's	<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 ULPs. 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 was scheduled for hearing January 14, 2009. The parties have reached a settlement on a number of charges and only one charge is proceeding to hearing. The charges that overlapped with the election objections have now settled and have been taken off calendar. The objections case has been severed from the consolidated complaint and the objections are being screened by the Executive Secretary. The Executive Secretary will be considering whether to dismiss the objection on the grounds of mootness as the election took place nearly a year ago (December 14, 2007) and no apparent relief may be available.

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
UCB's	<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
UCB's	<u>3</u>
Total	122

The three remaining unresolved challenged ballots are insufficient to affect the outcome of the election. On November 13, 2008 the Executive Secretary issued his order on election objections setting one objection for hearing and dismissing the rest. The UFW filed its request for review on due November 24, 2008. The request for review is pending before the Board for decision. On December 11, 2008 the Executive Secretary set this matter for investigative hearing on March 3, 2009.

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 of the pending charges is continuing. The Salinas Regional Director indicated that his investigation of the underlying charges is nearly complete and is expecting to issue a ruling soon.

HerbThyme Farms, Inc., 2008-RC-006-VIS

On October 30, 2008 Laborers International Union of North America, Local 1184, filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Herb Thyme Farm. The employer is a grower of various herbs (mint, oregano, cilantro...etc.) with approximately 90 employees. The pre-election conference was held on November 4, 2008. An election was held on November 6, 2008 in Thermal CA and yielded the following results:

Laborers International Union of North America, Local 1184	67
No Union	11
Unresolved Challenged Ballots	<u>16</u>
Total	94

On November 14, 2008 the Employer filed a single election objection concerning the appropriateness of the unit. On December 11, 2008 the Executive Secretary set a single objection for hearing for February 9, 2009.

COMPLAINT REPORT

TWO NEW COMPLAINTS ISSUED

The Hess Collection Winery, 07-CE-17-SAL

On December 11, 2008 the Salinas Regional Director issued a complaint against The Hess Collection Winery alleging that the employer intimidated, harassed, surveilled and discharged various workers because they engaged in protected concerted and union activities

Mayflower/Rio Blanco Dairy, 08-CE-26-VI

Regional Director issued a first amended consolidated complaint on December 8, 2008 alleging that the employer unlawfully interrogated, discriminatorily issued a disciplinary notice, changed the working conditions and issued a layoff notice to employees who joined, assisted and/or supported a labor organization or engaged in protected concerted activities.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Four hearings are currently scheduled

Mayflower/Rio Blanco Dairy, 07-CE-85-VI

Prehearing scheduled November 18, 2008

Hearing scheduled January 17, 2009

HerbThyme Farms, Inc., 2008-RC-006-VIS

Hearing scheduled February 9, 2009

LE Cooke Co., 08-RD-001-VIS

Hearing scheduled March 3, 2009

Mushroom Farms, 07-CE-70-EC

Prehearing scheduled February 5, 2009

Hearing scheduled March 10 & 11, 2009

Two hearings are pending hearing dates

Lassen Dairy, Inc., 07-CE-37-VI

Pending scheduling of hearing

Hess Collection Winery, 99-CE-23-SAL

Hearing to be taken off calendar and reset when appropriate

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

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

Hearing was held November 11-14, 2008 and the matter is pending receipt of the hearing transcripts and filing of post-hearing briefs.

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI

Hearing was held December 2 & 3 2008 and the matter is pending receipt of the hearing transcripts and filing of post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

Woolf Farming Co. of CA, 06-CE-28-VI

ALJ decision issued December 9, 2008

Exceptions due January 2, 2009

Reply due January 15, 2009

CASES PENDING BOARD DECISION:

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

The UFW filed a motion for reconsideration of the Board's decision on request for review of election objections. The parties' responses were received December 1, 2008. The matter is pending board decision.

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

Request for review of Executive Secretary order partially dismissing election objections is pending board decision.

Boschma & Sons Dairy, 2008-MMC-2

The mediator's report issued December 9, 2009. The parties have agreed to the terms of a collective bargaining agreement. If no petition for review is filed, the mediator's report shall become a final order of the Board

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:

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 was notified that the parties had selected Luella E. Nelson as their mediator/arbitrator. The mediation sessions began on November 11, 2008. The parties have agreed to a collective bargaining agreement and the agreement and the Mediator's report have been filed with the Board for processing.

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 was held October 16, 2008. On November 20, 2008, the court issued a published opinion affirming in part and reversing in part the Board's decision in 33 ALRB No. 6. Both the Board and UFW filed a motion for reconsideration on December 4 and 5, respectively. The case is pending decision by the court. A ruling by the court is expected by December 22, 2008.

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. The petitioner's reply brief was filed November 12, 2008. The matter is now pending decision by the court or the setting of oral argument.

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 was filed

November 4, 2008. The court summarily denied the petition for review on December 17, 2008.

6. Special Projects

- a. Information Technology Update/Case Tracking System – The committee met with Steve Guida on Friday, December 12. The time tracking system is being tested and is expected to go live the first week of January. The Visalia and Salinas staffs received training on the new system last week. The El Centro staff will be trained this week. The next meeting will be held on December 31, 2008 at 10:00 a.m. An invitation will be extended to Scott Vogel of LWDA to meet with Board and Steve Guida for a demonstration of the ALRB's tracking systems.
- b. Financial Integrity and State Managers Accountability Act (FISMA) — Member Rivera-Hernandez reported on policy updates. Student Assistant Stamps will be assisting with project.

7. Legislation: None

8. Personnel:

Senior Legal Typist - No applications have been received since the position was re-posted.

Interviews for the Business Service Officer are scheduled for Friday, December 19, 2008.

9. Roundtable:

Member Rivera-Hernandez spoke briefly with State and Consumer Services Agency Secretary Rosario Marin where Secretary Marin offered suggestions for future coordination and outreach efforts.

The ALRB has been invited to participate in the Chapman University Government Career Information Fair.

The next Board meetings will be scheduled for Tuesday, January 6, at 1:00 p.m. and Wednesday, January 21, at 10:00 a.m.

The public meeting adjourned at 11:15 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.