

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**January 21, 2009**

Time: 10:00 a.m.  
Members Present: Chairman Almaraz (via telephone), Members Shiroma and Rivera-Hernandez  
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary Barbosa, ALJ Soble, Analyst Massie, and Student Assistant Macliz  
Others: General Counsel Lee

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for January 6, 2009 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** Member Rivera-Hernandez reported that Finance issued their guidance on Spring budget requests limiting augmentations to threats to health and safety.
- 4. General Counsel Report:** Six new charges have been filed in the last two weeks.
- 5. Executive Officer Report:**

**ELECTION REPORT:**

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

None.

**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 were held in abeyance pending resolution of ULP's mirroring the election objections. On October 5, 2007 the Regional Director dismissed three of four 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 the three 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 setting one objection for hearing and dismissing the rest. The UFW filed a request for review of the partial dismissal. The Board's issued its decision on November 7, 2008 affirming the Executive Secretary's order dismissing the election objections. The UFW filed a motion for reconsideration of the Board's decision. The General Counsel intervened in the proceeding and filed a response to the motion. On January 7, 2009 the Board denied the UFW's motion for reconsideration. The hearing on the sole objection was held November 11, 2008. Post-hearing briefs are due February 2, 2009.

**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 matter is set for hearing March 24, 25 and 26, 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
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. On January 21, 2009 the Board denied the Union's request for review. The investigative hearing is scheduled for 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.

**Herb Thyme Farm, 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. The investigative hearing is scheduled for February 9, 2009.

**Valley View Farms, Case No. 2009-RD-001-VIS.**

On January 6, 2009 agricultural employee Jose Sanchez filed a decertification petition with the Visalia Region Office seeking the ouster of the incumbent bargaining representative UFCW Local 5 at Valley View Farms. The employer is a dairy in Hanford, CA with 43 employees. An election was held on January 13, 2009 with the following results:

UFCW Local 5	7
No Union	32
Unresolved Challenged Ballots	<u>3</u>
Total	42

As the number of unresolved challenged ballots is insufficient to affect the outcome of the election, no challenged ballot investigation will be necessary. Election objections, if any, are due January 21, 2009.

## **COMPLAINT REPORT**

### **NEW COMPLAINTS ISSUED**

None.

### **PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

#### **Four hearings are currently scheduled**

**HerbThyme Farms, Inc., 2008-RC-006-VI**  
Hearing scheduled February 9, 2009

**LE Cooke Co., 08-RD-001-VIS**  
Hearing scheduled March 3, 2009

**Mushroom Farms, 07-CE-60-EC**  
Prehearing February 5, 2009  
Hearing scheduled March 10 & 11, 2009

**Lassen Dairy dba Meritage Dairy, 07-CE-37-VI**  
Prehearing March 3, 2009  
Hearing scheduled March 24, 25 and 26, 2009

### **HEARINGS HELD:**

None.

**CASES PENDING ALJ/IHE DECISION:**

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

Hearing was held December 2 & 3 2008. Post-hearing briefs are due January 23, 2009.

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

Hearing was held November 11-14, 2008. The post-hearing briefs are due February 2, 2009.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASES PENDING EXCEPTIONS OR REPLY:**

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

None.

**CASES PENDING BOARD DECISION:**

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

Exceptions filed January 2, 2009

Reply filed January 15, 2009

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

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

Board decision issued January 21, 2009.

**REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:**

None.

**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 rehearing on December 4 and 5, respectively. The court denied the petitions for rehearing on December 16, 2008. The court's decision became final on December 22 and the time to file a petition for review in the Supreme Court expired on January 2, 2009. Therefore, this case is now final. Remittitur issued January 20, 2009 (returning jurisdiction to the Board). Board will now issue an order to open and count the ballots of the challenges overruled.

**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.

**DeHaan v. ALRB, G578041** (Claim to the California Victim Compensation Board)

The complaint alleges that Bryan DeHaan (age 16) and Jacob DeHaan (age 11) suffered personal injuries, namely emotional distress, during the conduct of the election at Heritage Dairy in Tulare, CA on April 23, 2008 as a result of the conduct of Board agents in investigating challenges to the eligibility of the two boys. The Victim Compensation & Government Claims Board (VCGCB) was scheduled to deny the claim at its January 15, 2008 board meeting, which would thereafter allow the filing of a complaint in the Superior Court.

## **6. Special Projects:**

- a. Information Technology Update/Case Tracking System—The committee met on January 16. The case time tracking system has launched. Student Assistant Macliz reported on the progress of the case tracking system data verification process. Replacement options for the Headquarters' telephone server were reviewed.
- b. Financial Integrity and State Managers Accountability Act (FISMA)—Member Rivera-Hernandez provided an update on drafting of the ALRB policy manuals.
- c. Rulemaking Calendar – Each year state agencies are required to publish a Rulemaking Calendar listing potential topics for regulatory action during the calendar year. Agencies are not mandated to act on topics provided and also may proceed with rulemaking on topics not published on the calendar.

The Board decided to include on the calendar clarification of family member eligibility exclusions.

**7. Legislation:** None

**8. Personnel:** Nothing new to report.

**9. Roundtable:**

Chairman Almaraz and Assistant General Counsel Blanco will be panelists at the 20<sup>th</sup> Annual Center for Collaborative Solutions' Labor-Management Conference scheduled for March 18-20, 2009.

The public meeting adjourned at 11:40 a.m.

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