

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 20, 2009

Time: 10:25 a.m.*
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary
Barbosa, ALJ Soble & Analyst Massie

**Commencement of the meeting was delayed due to a power outage.*

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for May 6, 2009 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman's Report:** Labor and Workforce Development Agency (LWDA) has provided the Department of Industrial Relations (DIR) with funding for printing costs of heat illness brochures. Therefore, DIR declined the Board's offer of assistance. The ALRB received a plaque from the California State Employees Charitable Campaign for the "Spirit of California Award" for Outstanding per Capita Giving and a Bronze certificate for our participation level.
- 4. General Counsel's Report:** General Counsel Lee reported that regional staffs remain on top of pending cases despite limited staffing. The Board acknowledged the outstanding work the regions are doing with limited resources.
- 5. Executive Officer Report:**

ELECTION REPORT:

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

Two notices of intent to take access (NA) were filed during this reporting period. The UFCW filed an NA on May 14, 2009 seeking access to the agricultural employees at C & R Vanderham Dairy. The UFW filed an NA on May 14, 2009 seeking access to the agricultural employees at Ag Wise Enterprises. No NO's have been filed during the reporting period.

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 were filed February 2, 2009. The IHE decision issued March 4, 2009. On March 16, 2009 the Executive Secretary granted the Employer's request for an extension of time to file exceptions to the Investigative Hearing Examiner's decision. On April 20, 2009, the Decertification Petitioner filed exceptions to the IHE's decision. No exceptions were

filed by the employer. The reply to exceptions was received May 1, 2009. The matter is pending before the Board for decision.

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. A hearing on the related ULP's was held March 24 and 25, 2009. Post-hearing briefs were received May 8, 2009. The matter is pending before the Investigative Hearing Examiner for decision.

Henry Hibino Farms, 2009-RD-001-SAL

On April 7, 2009 agricultural employee Jose Lopez filed a decertification petition with the Salinas Regional Office seeking the ouster of the incumbent bargaining representative UFW at Henry Hibino Farms (HHF). The employer is a grower of

mixed vegetables including lettuce, broccoli, cauliflower, celery and onions. HHF is located in Salinas and has approximately 15 employees. An election was held April 14, 2009 with the following results:

UFW	6
No Union	9
Unresolved Challenged Ballots	<u>0</u>
Total	15

On April 21, 2009 the UFW filed objections to the election. The Executive Secretary issued his order setting the objections for hearing on May 8, 2009. An investigative hearing on two objections is scheduled for June 23, 2009.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

Frank Pinheiro Dairy, 2009-CE-001-VIS

On April 24, 2009 the Visalia Regional Director issued an order consolidating seven (7) charges in Frank Pinheiro Dairy, 2009-CE-001-VIS. According to the complaint, the employer allegedly engaged in a pattern of discrimination against its employees, including threats, interrogation, suspension, disciplinary action and discharge to discourage support or assistance to the petitioning union during its organizational drive.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Two hearings are scheduled:

HerbThyme Farms, Inc., 2008-CE-074-VIS

1st Prehearing May 12, 2009

2nd Prehearing May 27, 2009

Hearing June 24, 2009

Henry Hibino, 2009-RD-001-SAL

Hearing June 23, 2009

No hearings in progress.

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

Lassen Dairy dba Meritage Dairy, 07-CE-37-VI

Hearing held March 24 and 25.

Post-hearing briefs filed May 8, 2009

Mushroom Farms, 07-CE-60-EC

Hearing held March 10 & 11, 2009

Post-hearing briefs filed May 11, 2009

Mushroom Farms, 07-CE-34-SAL

Hearing held April 14, 15, 16, 17 and 21, 2009

Pending receipt of transcripts and post-hearing briefs

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

Decision issued March 16, 2009

Exceptions filed April 9, 2009

General Counsel filed a reply brief on April 23, 2009

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

Decision issued March 4, 2009

Exceptions filed April 20, 2009

Replies received May 1, 2009

Cieniga Farms, Inc., 00-CE-334-EC(SM)

Motion To Make Case Eligible for Pay Out

Responses due May 28, 2009

San Joaquin Tomato Growers, Inc., 93-CE-38-VI (20 ALRB No. 13)

Regional Director's Motion to Close Case Without Full Compliance

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Cieniga Farms, Inc., 00-CE-334-EC(SM)
Motion To Make Case Eligible for Pay Out

BOARD DECISIONS:

Hess Collection Winery, Case No. 2003-MMC-01 (29 ALRB No. 6)
Board decision issued May 19, 2009 (35 ALRB No. 3)

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION

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 response brief was filed October 2, 2008. The UFW's response brief was filed October 3, 2008. The petitioner's reply brief was filed November 12, 2008. The matter is now fully briefed and is pending decision by the court or the setting of oral argument.

Bryan DeHaan and Jacob DeHaan v. California Agricultural Labor Relations Board, et al., 2009-NC-09-232146

On March 27, 2009 *Bryan DeHaan and Jacob DeHaan* filed a complaint in the Superior Court of Tulare County, Visalia Division, Case No. 09-232146 (VCGCB Claim No. G578040). against the *Agricultural Labor Relations Board, et al* alleging that that ALRB agents falsely imprisoned the DeHaans, two minors, in the process of taking their challenged ballot declarations at a representation election conducted by the ALRB on April 23, 2008 at Heritage Dairy in Tulare, CA. An answer to the complaint is due June 8.

6. Special Projects

- a. Information Technology Update/Case Tracking System—The Complaint Reporting feature is now operational. The next committee meeting is scheduled for May 29th. The ALRB's Information Technology Capital Plan was completed and sent to Employment Development Department for incorporation in the LWDA plan on May 15.
- b. Financial Integrity and State Managers Accountability Act (FISMA) — A committee was formed to prioritize the numerous drafted and revised

personnel policies. The committee will meet with Personnel Manager Dorothy Kojima to begin finalizing the policies for Board review

- c. Center for Collaborative Solutions (CCS) 2010 Conference—The Center for Collaborative Solutions has requested the ALRB co-sponsor next year's event. While the Board will not provide funding for the event, we will facilitate the planning process and provide moderators and/or panelists within our area of law.

7. Legislation –

SB 789 (Steinberg)—Labor Representatives: Elections

This bill is identical to SB 180, which passed the Legislature in 2007 but was vetoed by the Governor. The bill would amend the Agricultural Labor Relations Act (Labor Code sec. 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 for willful or repeated commission of specified 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. The April 14, 2009 amendments deleted the requirement that the cards be signed under penalty of perjury and deleted the witness statement, also which was to be signed under penalty of perjury. The language deleted, from section 1156.35, subdivision (c)(3), is as follows:

~~(F) The following statement, to be signed by the employee signing the representation card: "I declare under penalty of perjury under the laws of California that I am employed by the agricultural employer that is named in this representation card."~~

~~—(G) The following statement, to be signed by the person who witnesses the employee signing the representation card: "I declare under penalty of perjury under the laws of California that I witnessed the signing of this representation card and that, to the best of my knowledge, information, and belief, the employee who signed this representation card was not intimidated, threatened, or coerced in any way and was not paid any money or other thing of value in exchange for signing this representation card."~~

The bill was re-referred to the Committee on Appropriations. The bill passed from committee on April 21, passed the Senate on April 23 and sent to the Assembly where it was sent to the Committee on Labor and Employment on April 30. On May 7, the bill passed from committee and was re-referred to the Committee on Appropriations.

AB 579 (Huber)—State Boards and Commissions; Annual Salaries

This bill would delete the existing salary provisions pertaining to specified boards and commissions, including the ALRB, and substitute a salary setting mechanism based on an audit by the State Auditor. Specifically, the bill would require the State Auditor, beginning January 1 of each even-numbered year, to audit the workload of each state board and commission and to make a finding regarding the workload of that state board or commission and the number of hours necessary for each board member or commissioner to work to fulfill his or her duties. The State Auditor would be required to complete these audits by September 1 of each even-numbered year. The bill would also require the Governor, by January 1 of each even-numbered year, to establish by executive order the annual salaries of all board members and commissioners based on the workload audits and associated findings of the state auditor. The bill would prohibit an affected board member or commissioner from being compensated for his or her service in the next year, beyond payment of per diem and reimbursement of travel and attendance costs made according to law, if the State Auditor fails to conduct the audit or if the Governor fails to establish by executive order their annual salaries. This bill was referred to the Committee on Business and Professions on March 31. On April 22, the bill passed from committee and was referred to the Committee on Appropriations. On May 6 the bill was referred to the Committee on Appropriations suspense file.

AB 783 (Anderson)--State government: agencies, commissions, boards: repeal.

This bill would require that all statutorily created state agencies, boards, and state commissions that are funded by General Fund revenues, except for the Franchise Tax Board, be repealed on January 1, 2022, unless a later enacted statute, that is enacted before January 1, 2022, deletes or extends that date. The bill was referred to the Committee on Business and Professions on March 23.

AB 1501 (V. Manuel Perez). Boards and commissions: salaries full time.

This bill would require the salary of a board member, as defined, that is set by statute to be based on the board member serving full time and would require, if a board member does not work full time in any given month, to prorate the salary of that board member to the actual hours worked while serving as a board member. The bill would exclude from these requirements a board member who is paid a salary on or after January 1, 2010, of less than \$100,000. The bill would require the Department of Personnel Administration to adopt regulations for determining which activities constitute service as a board member and the minimum number of hours required to deem a board member to be serving full time, which would be prohibited from being less than 160 hours per month. On April 2 the bill was referred to the Committee on Business and Professions. On April 21 a hearing was set but canceled at the request of the author. The bill passed from committee on April 29 and was re-referred to the Committee on Appropriations.

SB 685 (Strickland). State boards and commissions: salaries: suspension.

This bill would prohibit members appointed to specified state boards and commissions from receiving a salary for the 2010-11, 2011-12, and 2012-13 fiscal years. This bill would authorize a member of a state board or commission who is prohibited from receiving a salary under these provisions to receive a specified per diem payment during those fiscal years. On March 19, this bill was referred to the Committee on Governmental Organization. On March 27, the bill was set for hearing April 28. On April 13 the bill was amended and re-referred to the Committee on Governmental Organization. The bill failed passage in committee on April 28. Reconsideration was granted.

- 8. Regulations— Proposal to Clarify Familial Voter Eligibility Exclusions**—The Board discussed the breadth of the definitions of "child" and "parent" in the proposal to clarify the familial voter eligibility exclusions. The Board decided to proceed with issuing the regulations for public comment as agreed to at the previous meeting. The Board decided to defer the scheduling of the initiation of the formal rulemaking process pending discussion at its next meeting on June 3, 2009 of the need to clarify its discovery regulations, thereby preserving the option of including that subject matter in the same regulations package.

- 9. Personnel** – Nothing new to report.

10. Roundtable:

Cross-training for regional office staff with the Department of Fair Employment and Housing and the Equal Employment Opportunity Commission was conducted from Headquarters via teleconferencing. California Rural Legal Assistance cross-training is being arranged for a future date.

After consultation with regional staff, suggestions were presented for new outreach materials and replenishment of existing materials. The Board authorized expenditure of up to \$30,000 for outreach materials.

The public meeting adjourned at 11:59 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.