

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**June 3, 2009**

Time: 10:00 a.m.  
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez  
General Counsel: Michael Lee  
Staff Present: ALJ Soble, Board Counsel Wender, Heyck and Robinson; & Analyst Massie  
Others: Freddie Sanchez, UFCW Local 101; Tim Hamann, UFCW Local 5; Rodney Wilson, Consultant to Assembly Speaker Karen Bass; Bryan Little, California Farm Bureau  
Absent: Executive Secretary Barbosa

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for May 20, 2009 were approved 3-0 with minor changes.
- 2. Public Comments:** Mr. Sanchez inquired about the location of Ace Tomato Company, Inc.
- 3. Chairman Report:** The Labor and Workforce Development Agency (LWDA) senior staff meeting was cancelled on June 2 due to the Governor's speech. LWDA requested information regarding audits conducted between January 1, 2008 to present to be posted on the Transparency in Government website. The ALRB has no items to post at this time. The Department of General Services requested a summary of home storage permits. The ALRB has not issued any permits this fiscal year. A single Board meeting will be scheduled for the month of July due to vacation schedules.
- 4. General Counsel Report:** The Regional Offices continue to process cases in a timely manner while reducing backlogs. General Counsel Lee will visit each regional office to discuss performance and possible improvements in conjunction with the recently implemented time management system.
- 5. Executive Officer Report:**

## **ELECTION REPORT:**

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

One NA and one NO were filed during this reporting period. On May 21, 2009, Teamsters Local 890 filed an NA seeking access to the agricultural employees at Kawahara Nurseries. Also on May 21, 2009, Teamsters Local 890 filed an NO seeking to organize the agricultural employees of Kawahara Nurseries.

### **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. On June 1, 2009 the ALJ issued his decision in this matter. Exceptions are due June 24, 2009. Reply briefs are due July 7, 2009.

**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 the two objections is scheduled for June 23, 2009.

**COMPLAINT REPORT**

**NEW COMPLAINTS ISSUED**

None.

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

**One hearing is scheduled:**

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

1<sup>st</sup> Prehearing held May 12, 2009

2<sup>nd</sup> Prehearing held May 27, 2009

Hearing June 24, 2009

**No hearings in progress.**

**HEARINGS HELD:**

None.

**CASES PENDING ALJ/IHE DECISION:**

**Mushroom Farms, 07-CE-34-SAL**

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

Post-hearing briefs due June 15, 2009

**ALJ/IHE DECISIONS ISSUED:**

**Mushroom Farms, 07-CE-60-EC**  
Decision issued May 29, 2009

**Lassen Dairy, Inc. dba Meritage Dairy, 07-CE-37-VI**  
Decision issued June 1, 2009

**CASES PENDING EXCEPTIONS OR REPLY:**

**Mushroom Farms, 07-CE-60-EC**  
Exceptions due June 22, 2009  
Reply briefs due July 6, 2009

**Lassen Dairy, Inc. dba Meritage Dairy, 07-CE-37-VI**  
Exceptions due June 24, 2009  
Reply briefs due July 7, 2009

**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 were due May 28, 2009. None received to date.

**San Joaquin Tomato Growers, Inc., 93-CE38-VI (20 ALRB No. 13)**  
Regional Director's Motion to Close Case without Full Compliance  
Responses due June 15, 2009. Replies are due June 29, 2009

**Ace Tomato Company, Inc., 93-CE-37-VI (20 ALRB No. 7)**  
Regional Director's Motion to Close Case without Full Compliance  
Responses due June 19, 2009. Replies are due July 2, 2009

**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:**

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, 2009.

**6. Special Projects**

- a. Information Technology Update/Case Tracking System—The committee met on May 29 to review the Trust Fund module of the tracking system. Changes were suggested and the module is being tested. The update and review process is proceeding smoothly. Translations of various revised Spanish-language forms are being reviewed and after approval will be uploaded to the website. The next committee meeting is scheduled for 1:00 p.m. on June 24.

- b. Financial Integrity and State Managers Accountability Act (FISMA)—The Board's policy committee is finalizing several policies that will be issued for approval at the June 17<sup>th</sup> Board meeting. The committee will meet with Personnel Manager Kojima to receive her input. Resource documents that are being used to draft the policies will be sent to all Board members and counsel to use in the ongoing approval process except for the Employment Development Department's manual which is too voluminous.

## 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.

As amended on May 29, this bill would require the State Auditor to annually, upon appropriation by the Legislature, audit the workload of at least two state boards or commissions comprised of board members or commissioners to whom the state pays an annual salary for their service on those state boards and commissions. The State Auditor would be required to make findings for each state board or commission audited 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 to that state board or commission. The State Auditor would be required to complete these audits and make these findings by June 1 of each year. The State Auditor would also be required to annually report to the Legislature and the Governor regarding these audits and findings. The State Auditor would be required to audit the workload of the California Integrated Waste Management Board and the California Unemployment Insurance Appeals Board in accordance with, and in satisfaction of, the above provisions, by June 1, 2010. On June 2, 2009, the bill passed on to the Senate.

**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. On May 28 the bill was held under submission.

**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** – Counsel described two potential ambiguities in Regulation 20236 relating to (1) the pre-hearing prohibition on discovery of non-supervisory witness declarations where the declarant is a named charging party or discriminate; and (2) the use of the phrase “purely and clearly exculpatory” evidence, as opposed to simply “exculpatory” evidence. The Board decided to defer discussion until its next meeting on June 17 and in the interim to solicit the input of the Regional Directors on these issues. The Board voted 3-0 to postpone the scheduling of the initiation of the formal rulemaking process pending discussion at its next meeting on June 17, 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** – Interviews for the Student Assistant position have begun. The position will become available sometime after the middle of June.

**10. Roundtable**

The Association of Labor Relations Agencies’ 59<sup>th</sup> Annual Conference will be held July 18-22 at the Oakland Marriott City Center in Oakland, California. Chairman Almaraz will participate in the ALRAcademy for chairpersons, board and commission members, general counsels and high level agency staff from July 17-19, 2009. At least one ALRB Administrative Law Judge will participate in the Advocates’ Day Conference on Monday, July 20.

M Corp is hosting an open house on June 3, 2009, from 4-7 p.m. at its offices at 947 Enterprise Drive, Loft C, Sacramento.

Executive Secretary Barbosa has contacted the NLRB to renew the interagency agreement between the NLRB and the ALRB.

The public meeting adjourned at 11:00 a.m.

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