

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 5, 2009

Time: 1:00 p.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: ALJ Soble, Board Counsel Wender, Heyck and Robinson; Executive Secretary Barbosa; Accounting Officer Davis; Visalia Regional Director Alderete, Assistant General Counsel Aceron and Kennedy
Absent: Analyst Massie
Others Present: Freddie Sanchez and John Ulrich, UFCW Local 101; Tim Hamann, UFCW Local 5; Rodney Wilson, Consultant to Assembly Speaker Karen Bass; Curtis Notsinneh, Consultant to Assemblyman Jerry Hill

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for June 17, 2009 were approved 3-0 with minor changes.
2. **Public Comments:** None
3. **Chairman Report:** Chairman Almaraz reported that the State Controller's Office had given the ALRB an award for excellence in financial reporting for Fiscal Year 08/09; the award was presented to Accounting Officer Davis and the Board thanked her for her hard work. Mr. Almaraz also reported on the Labor and Workforce Development Agency (LWDA) meeting where there was a discussion of the Governor's new "Waste Watchers" website which allows individuals to report problems in state government. Executive Secretary Barbosa and Administrative Law Judge Soble are the designated ALRB contacts for this program. Mr. Almaraz reported that contract exemptions for the ALRB have been submitted to the LWDA, the student assistant contract was approved the week of July 27, and that the ALRB's annual report will be completed by the end of August and submitted to the Legislature in September.

4. General Counsel Report: General Counsel Lee reported that there had been a total of 8 new charges filed in both regional offices since the last Board meeting in July. Mr. Lee reported that charges are being investigated and processed quickly despite the lack of a full staff in the regional offices.

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 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. Both the employer and charging party filed exceptions to the ALJ decision on June 24, 2009.

Reply to exceptions briefs were filed July 7, 2009. The matter is pending before the Board 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 the two objections was held June 23 and 24, 2009. Post-hearing briefs are due August 31, 2009.

Tony and Dina Esteves dba Esteves Dairy, 2009-RD-002-VIS

On July 13, 2009 agricultural employee Felipe Mejia Navarro filed a decertification petition with the Visalia Regional Office seeking the ouster of the incumbent bargaining representative UFCW, Local 5, at Tony and Dina Esteves dba Esteves Dairy. The employer is a dairy located in Visalia CA with 10 employees. An election was held July 20, 2009 with the following results:

UFCW Local 5	0
No Union	8
Unresolved Challenged Ballots	<u>0</u>
Total	8

As neither party filed objections to the election, the Executive Secretary issued a Certification of Results of Election on August 4, 2009.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

None.

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

Two hearings are scheduled:

Frog's Leap Winery, 07-CE-28-SAL

Prehearing August 6, 2009

Hearing August 25, 2009

* See status below under cases settled or resolved

D'Arrigo Bros. of CA, 2007-CE-12-SAL

Prehearing September 10, 2009 (1:30 PM)

Hearing October 20-23 and 27-30, 2009

No hearings in progress.

HEARINGS HELD:

Henry Hibino Farms, 2009-RD-001-SAL

Hearing June 23, 2009

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

Hearing June 24, 2009

CASES PENDING ALJ/IHE DECISION:

Mushroom Farms, 07-CE-34-SAL

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

Post-hearing briefs received July 15, 2009

Pending ALJ decision

Henry Hibino Farms, 2009-RD-001-SAL

Post-hearing briefs due August 31, 2009.

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

Post-hearing briefs due August 31, 2009.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

Decision issued March 4, 2009

Exceptions filed April 20, 2009

Replies received May 1, 2009

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

Regional Director's Motion to Close Case without Full Compliance

Response received June 19, 2009. A reply from the Respondent was received July 8, 2009.

Ace Tomato Company, Inc., 93-CE-37-VI (20 ALRB No. 7)

Regional Director's Motion to Close Case without Full Compliance

Response received June 19, 2009. A reply from the Respondent was received July 8, 2009.

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

Exceptions filed June 24, 2009

Reply briefs filed July 14, 2009

CASES SETTLED OR RESOLVED:

Mushroom Farms, 07-CE-60-EC

Exceptions were due June 22, 2009. As neither party filed exceptions to the ALJ decision, the decision was made final on June 26, 2009. This matter is now fully resolved and will be removed from this report.

Frog's Leap Winery, 07-CE-28-SAL

*The hearing in this matter was scheduled to begin August 25, 2009, but the matter has recently settled and the Executive Secretary is awaiting the request to take the case of calendar.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Board decision issued July 20, 2009. Any petition for review in this matter must be filed with the Court of Appeal by August 20, 2009.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

COURT LITIGATION

Vincent B. Zaninovich & Sons, Case No. S174304 (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. On June 18, 2009 the court of appeal summarily denied the petition for writ of review. The employer filed a petition for review in the California Supreme Court on June 26, 2009. The court of appeal record was received July 1, 2009. Our answer to the petition for review was filed July 16, 2009. The California Supreme Court denied the petition for review on July 29, 2009. Any petition for hearing before the US Supreme Court is due within ninety (90) days. The case was released for compliance on August 3, 2009.

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. The answer to the complaint was filed June 22, 2009. The trial in this matter has been scheduled for April 15, 2010.

6. Special Projects

- a. Information Technology Update/Case Tracking System— Board Member Shiroma reported that progress is being made on 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. The next committee meeting is scheduled for 9:00 a.m. on August 28, 2009.

- b. Financial Integrity and State Managers Accountability Act (FISMA)--Update on creation of ALRB policy manuals for accounting, personnel and business services including discussion of personnel policies. Member Rivera-Hernandez reported that the committee will meet on August 12, 2009 regarding additional policies that need to be updated.

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. On July 1 there was a hearing on the bill, and on July 2, the bill passed from committee. On July 6 the bill was read a second time.

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. On June 3, the bill was read for the first time in the Senate and referred to the Rules Committee for assignment. On June 30, the bill was amended to change the June 1 deadlines to December 31. The bill was read a second time and referred to the Committee on Government Organization. On July 8, the bill passed from committee and was re-referred to the Appropriations Committee. A hearing is scheduled for August 17, 2009.

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 previously 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 solicited input from Regional staff who were present at the Board meeting to present their view. Regional staff agreed with the recommendation to delete “purely and clearly” from Regulation section 20236 (d). However, staff disagreed with the recommendation to amend section 20236 (a) of the regulation to allow for the discovery of written statements by named charging parties who will be testifying as witnesses at an ALRB hearing. Regional staff stated their reasons for keeping such statements confidential until the named charging party testifies at the hearing. General Counsel Lee also gave his perspective on the issue. The Board decided not to pursue any changes to section 20236 (a).

9. Personnel – Upcoming interviews are scheduled in the Salinas regional office for a Field Examiner and a Legal Secretary.

10. Roundtable —

The Association of Labor Relations Agencies (ALRA) annual dues statement for the period of June 1, 2009 through May 31, 2010 is now due. The dues are \$400. The Board approved the payment of \$400 in annual dues to ALRA.

General Counsel Lee reported that the Regional staff had been contacted by the Mexican Consulate about participating in a series of labor fairs in Southern California in late August and early September 2009. The labor fairs will be attended by various government agencies and will provide information about workers' labor and employment rights.

The public meeting adjourned at 3:00 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.