

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 5, 2010

Time: 10:10 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Lee
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Heyck, Wender and Robinson, Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for April 21, 2010, were approved 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** Member Rivera-Hernandez attended a reception at the Mexican Consulate on May 4th. Member Guerrero attended the California Women for Agriculture's annual legislative reception on May 4th.
3. **General Counsel Report:** There has been an increase in filing of charges in the Salinas Region. An election will be conducted tomorrow at Frank Pinheiro Dairy.
4. **Executive Officer Report:**

ELECTION REPORT:

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

None.

PENDING ELECTION MATTERS:

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 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. On October 28, 2009 the Board issued its decision on the companion ULP matter. On November 30, 2009 the employer filed a petition for writ of review with the 5th DCA. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent ALRB's brief was filed February 16, 2010. Petitioner's reply brief was filed March 8, 2010. All briefing has been completed. The matter is pending decision by the court or oral argument.

Kawahara Nursery, Inc., 2010-RC-001-SAL

On January 12, 2010 the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of Kawahara Nursery, Inc. The employer is a nursery located in Morgan Hill, San Lorenzo and

Gilroy with 173 employees. An election was held on January 19, 2010 with the following results:

UFW	70
No Union	68
Unresolved Challenged Ballots	<u>28</u>
Total	166

The unresolved challenged ballots are outcome determinative and were investigated by the Salinas Regional Office. The UFW filed objections to the election on January 26, 2010. On March 29, 2010, the Regional Director issued his report on challenged ballots. The Employer filed exceptions to the Regional Director's report on April 9, 2010. The matter is pending Board review of the Employer's exceptions and the Executive Secretary's order on election objections.

The Hess Collection Winery, 2010-RD-001-SAL

March 11, 2010, Rybicki & Associates, representing a group of agricultural employees at The Hess Collection Winery, filed a decertification petition with the Salinas Regional Office seeking to oust the incumbent union UFCW Local 1096, as the bargaining representative of the employees of The Hess Collection Winery. The employer is a grower of premium wine grapes with operations in Mt. LaSalle, Veeder Hills, Veeder Crest and Veeder Summit. The winery employs approximately 49 employees. On March 16, 2010, the Regional Director blocked the election. On March 26, 2010 the Employer filed a request for review of the Regional Director's blocking decision. On April 7, 2010, the Union filed a response to the Employer's request for review. On April 9, 2010, the decertification petitioner's representative filed a request for review of the Regional Director's blocking decision. The matter is pending Board decision.

Frank Pinheiro Dairy, 2010-RD-002-VIS

On April 29, 2010, agricultural employee Guillermo C. Rios filed a decertification petition with the Visalia Regional Office seeking to oust the incumbent union UFCW Local 10, as the bargaining representative of the employees of Frank Pinheiro Dairy. The employer is a dairy located in Strathmore with approximately 23 employees. The Regional Director has decided to go forward with the election but impound the ballots. His letter informing the parties of the basis for the impoundment will be issuing this afternoon. The election is scheduled for May 6, 2010, from 11 a.m. to 3 p.m., in Strathmore CA.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

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

Quality Produce, LLC., 2009-CE-039-VIS

The prehearing conference was taken off calendar due to a tentative settlement between the parties. We have been informed that the settlement was not finalized so the prehearing conference will have to be re-calendared for hearing. The hearing is scheduled for May 11, 2010.

Frank Pinheiro Dairy, 2009-MMC-02

Prehearing Conference held April 27, 2010

Hearing: May 18, 2010

HEARINGS HELD:

Temple Creek Dairy, Inc., 2009-CE-048-VIS

Prehearing Conference held March 29, 2010

Hearing held April 27-30, and May 3, 2010

Pending receipt of transcripts and filing of post-hearing briefs

CASES PENDING ALJ/IHE DECISION:

Temple Creek Dairy, Inc., 2009-CE-048-VIS

Prehearing Conference held March 29, 2010

Hearing held April 27-30, and May 3, 2010

Pending receipt of transcripts and filing of post-hearing briefs

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

The Hess Collection Winery, 2010-RD-001-SAL

Kawahara Nursery, Inc., 2010-RC-001-SAL

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Decision issued May 4, 2010

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02

Request for mandatory mediation and conciliation was received on September 10, 2009. On September 11, 2009 the petitioner filed a supplemental memorandum and declaration in support. On September 15, 2009 the Executive Secretary granted the Employer's request for an extension of time to file an answer to the petition. The answer to the petition was received September 23, 2009. On October 1, 2009 the Board issued its decision finding that the prerequisites for mandatory mediation and conciliation were met and referred the matter to the State Mediation and Conciliation Service (SMCS) for mandatory mediation and conciliation. On October 5, 2009 the SMCS provided the parties with a list of nine (9) mediators. In accordance with our regulations, the parties had seven (7) days to select a mediator from the list or mutually designate a mediator from a list of all qualified mediators maintained by the State. (See Regulations section 20403.) On October 8, 2009 Frank Pinheiro Dairy filed a petition for writ of review and request for immediate stay with the 5th DCA. On October 9, 2009 the court granted the immediate stay. On October 16, 2009 the ALRB filed the certified record and its preliminary opposition. Also on October 16, Frank Pinheiro Dairy filed its opening brief. Real Party in Interest filed its response brief on October 19, 2009. On October 30, 2009, the court issued an order dissolving the stay of the MMC process provided for in its previous order. The October 30, 2009 order also granted petitioner leave to file a reply within 10 days (November 9, 2009). On November 3, 2009 the Board filed a request for remand with the 5th DCA in order to consider arguments presented by the petitioner for the first time in its petition for writ of review. On November 5 and 6, 2009, respectively, the Employer filed its reply to opposition to petition for writ of review and notice of non-opposition to ALRB's request for remand. On November 13, the Court issued an order requesting clarification of the parties' intentions by letter briefing. The parties filed letter briefs with the court on November 20, 2009 (Respondent and Charging Party) and November 23, 2009 (Petitioner). On December 28, 2009 the court summarily denied the petition for writ of review. The petition for hearing is due January 7, 2010. No petition was filed with the Supreme Court. The MMC hearing before the mediator began on January 6, 2010. On January 21, 2010 the Board issued an order staying the mandatory mediation process pending reconsideration by the Board of its decision

and order in 35 ALRB No. 5. On February 3, 2010 the Board requested briefing on questions concerning Labor Code section 1164 (a). Both the employer and union filed responsive briefs on February 16, 2010. Reply briefs were received February 23, 2010. The Board issued its decision in this matter on March 24, 2010 (36 ALRB No. 1) setting several matters for investigative hearing. The hearing is scheduled for May 18 and 19, 2010.

COURT LITIGATION

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 deposition of an ALRB staff member and DeHann children were taken on September 1, 2009. The trial is scheduled for April 15, 2010. The Board filed a Motion for Summary Judgment/Summary Adjudication on December 18, 2009. Plaintiffs filed their Opposition and Declarations in Support Thereof on February 23, 2010. The Board's Reply is due on March 4, 2010. Hearing on the motion for summary judgment was held March 9, 2010, and the motion for summary judgment was granted. Entry of the order is still pending. The order granting the motion for summary judgment and judgment have been filed and served. Plaintiffs have approximately 30 days to file a notice of appeal. If no appeal is filed, then the case can be closed.

Lassen Dairy, Inc., F058940

On November 30, 2009 Lassen Dairy, Inc. filed a petition for writ of review of the Board's decision in (2009) 35 ALRB No. 7. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent's answering brief was filed February 16, 2010. Petitioner's reply brief was filed March 8, 2010. All briefing has been completed. The matter is pending decision by the court or oral argument.

Gallo Vineyards, Inc. (Roberto Parra), C063487

On November 24, 2009 Roberto Parra, the Real Party of Interest in Gallo Vineyards, Inc., filed a petition for writ of review of the Board's decision in (2009) 35 ALRB No. 6. The certified record was filed with the court on December 10, 2009. Petitioner's opening brief was filed January 29, 2010. ALRB's response brief was filed March 1, 2010. Real Party in Interest United Farm Workers of America's response brief was filed on March 23, 2010. Petitioner's reply brief was

filed on April 23, 2010. All briefing has been completed. On April 28, 2010, the court directed the Petitioner, Roberto Parra, to demonstrate in writing that the petition for writ of review was filed in the appropriate court. That response is due Monday, May 10, 2010.

San Joaquin Tomato Growers, Inc., C064352

On March 5, 2010 the United Farm Workers of America filed a petition for writ of review of the Board's Administrative Order No. 2010-04. On March 10, 2010 the ALRB requested an extension of time to file certified record to March 30, 2010. The request was granted on March 12, 2010. On March 15, 2010 the ALRB filed a motion to dismiss the petition for writ of review. The UFW's brief in opposition to the motion to dismiss was filed March 23, 2010. On April 20, 2010, the Court of Appeal granted the Board's motion to dismiss the petition for writ of review. The UFW did not file a petition for hearing with the Supreme Court so this matter now returns to the ALRB for setting a ULP hearing on on laches, unclean hands, and any other potential equitable defenses to the enforcement and compliance with the Board's order in this matter. The matter is pending before the office of the Executive Secretary for scheduling of the hearing.

Ace Tomato Company, Inc., C064360

On March 5, 2010 the United Farm Workers of America filed a petition for writ of review of the Board's Administrative Order No. 2010-04. On March 10, 2010 the ALRB requested an extension of time to file certified record to March 30, 2010. The request was granted on March 12, 2010. On March 15, 2010 the ALRB filed a motion to dismiss the petition for writ of review. The UFW's brief in opposition to the motion to dismiss was filed March 30. The UFW's brief in opposition to the motion to dismiss was filed March 23, 2010. On April 20, 2010, the Court of Appeal granted the Board's motion to dismiss the petition for writ of review. The UFW did not file a petition for hearing with the Supreme Court so this matter now returns to the ALRB for setting a ULP hearing on on laches, unclean hands, and any other potential equitable defenses to the enforcement and compliance with the Board's order in this matter. The matter is pending before the office of the Executive Secretary for scheduling of the hearing.

Miscellaneous

Associations of Labor Relations Agencies (ALRA) dues for the period beginning June 1, 2010, through May 31, 2011 are \$400.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System; 2010 Telework Policy & Procedures – The Information Technology committee met on May 3rd to review the trial version of the decision template. The decision template is available on the shared drive for testing. The next committee meeting is scheduled for May 18th at 10 a.m. to discuss templates and identify project

priorities. A small group meeting will be held regarding updating compliance data and creating reports on compliance.

The Board voted 3-0 to adopt the Telework Remote Access Security Standard SIMM 66A. The Board also voted 3-0 to adopt the pre-approved DGS Telework Policy and Procedures.

- b. Policy Committee Report– The policy committee met on attendance and leave policies this week. A change to family medical leave is being incorporated into the policy. The grievance and compliance policy will be reviewed next. The policy committee is scheduled to meet next week.
- c. Transparency Plan (Executive Orders S-08-09 and S-20-09)—All agencies within the Executive Branch are required to provide a Transparency Plan to the Office of the Inspector General by June 11th.

7. Legislation – Update, if any, on pending legislation affecting the ALRB.

SB 1474, as introduced, Steinberg. Labor representatives: elections.

This is a card check bill that is identical to SB 789, which was vetoed by the Governor in 2009.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board and the courts. Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

The bill was introduced, read for the first time, and sent to the Committee on Rules for assignment on February 19. On March 11, 2010, the bill was sent to the Committee on Labor and Industrial Relations. The bill was heard on April 13, 2010. On April 19, 2010 the bill passed out of committee and was re-referred to the Committee on Appropriations. On May 3, 2010, the bill was placed on the Appropriations suspense file.

SB 835, as introduced, Strickland. Government reorganization:

realignment or closure. This bill would enact the Bureaucracy Realignment and Closure Act of 2011. It would establish the Bureaucracy Realignment and Closure Commission in state government with a specified membership. Beginning on January 1, 2011, the Controller, the Director of Finance, the Legislative Analyst, the Legislative Counsel, the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, and the State Auditor would be required to develop recommendations for the closure or realignment of state bureaucracies for consideration by the commission. It would require the commission to independently evaluate the recommendations, conduct 3 public hearings, and, by January 1, 2012, have at least one member of the commission visit each state bureaucracy considered for realignment or closure. This bill would require the commission, not later than July 15, 2012, to submit a report of its final recommendations to the Governor and the Legislature that establishes a list of state bureaucracies that are proposed to be realigned or abolished. It would require the Governor, upon approval of the list of recommendations, to prepare the list as a reorganization plan and to submit the plan to the Legislature under the provisions relating to the Governor's reorganization plans.

This bill was introduced, read, sent to print and to the Rules Committee for assignment on January 4, 2010. On January 21, 2010, this bill was sent to the Committee on Governmental Organization. The bill was set for hearing on April 13, 2010 and failed passage in committee. The bill was set for hearing on April 22, 2010 (pending rules waiver) reconsideration was granted, passed out of committee and referred to Rules Committee. On April 19, 2010, Senate Rule 21.5(k)(2) was suspended allowing for reconsideration and vote. On May 3 with bill was withdrawn from Rules and sent to the Committee on Appropriations.

The following bills do not presently have any impact on the ALRB but are being tracked in the event of amendments that would extend their provisions to entities such as the ALRB:

AB 1659, as introduced, Huber. State government: agency repeals.

This bill would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies, as defined, and to conduct a comprehensive analysis of every agency to determine if the agency is still necessary and cost effective. The bill would require each agency scheduled for repeal to submit a report to the committee containing specified information. The bill would require the committee to take public testimony and evaluate the agency prior to the date the agency is scheduled to be repealed, and would require that an agency be eliminated unless the Legislature enacts a law, based upon a recommendation endorsed by a vote of the majority of the members of the committee, to extend, consolidate, or reorganize the agency. The bill would specify the composition of the committee, which would be appointed by the President pro Tempore of the Senate, the Speaker of the Assembly, and the Governor, and certain aspects of its operating procedure. The bill would also make a statement of legislative intent to enact legislation that provides for the repeal of every entity of state government, excluding an agency that is constitutionally created or an agency related to higher education. This bill is consistent with provisions of existing law governing the sunset review process for boards and bureaus under DCA. Because the bill does not establish new sunset dates for any state agencies, this bill is limited to the boards and bureaus under DCA already scheduled for sunset review pursuant to existing law. Accordingly, the bill as introduced does not include boards such as the ALRB. It will continue to be tracked in the event that an amendment broadens the scope of the bill. The April 7, 2010 amendments did not change the scope of the bill.

The bill was read for the first time and sent to print on January 19, 2010. On February 4, 2010, the bill was referred to the Committee on Business and Professions. On April 6, 2010, the bill was passed from committee, amended, and a vote was taken to not accept the amendments. On April 7, 2010, the bill was read a second time and amended. On April 8, 2010, the bill was referred to the Committee on Appropriations. On April 21, the first hearing was set and subsequently canceled at the request of the author. On April 28, the bill was amended, re-referred to the Committee on Appropriations, read a second time and amended. On April 29 the bill was re-referred to the Committee on Appropriations.

AB 2537, as introduced, Silva. State agencies: adjudications: presiding officers.

Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law provides for the disqualification of a presiding officer for bias, prejudice, or interest in the proceeding. Existing law authorizes an agency that conducts an adjudicative proceeding to provide by regulation for peremptory challenge of the presiding

officer. This bill would require that an agency that conducts an adjudicative proceeding provide by regulation for peremptory challenge of the presiding officer in cases where the presiding officer is an administrative law judge. The April 6 amendments added the following provision, which effectively exempts the ALRB from its provisions.

(e) Subdivision (d) shall not apply to an agency that has five or fewer administrative law judges and has an existing system of internal appellate review for requests for disqualification of an administrative law judge in which the disqualification determination is made by the agency.

The bill was introduced on February 19, 2010. The bill was read for the first time on February 22 and referred to the Committee on Business and Professions on March 18. On April 6, 2010, the bill was set for the first hearing. The hearing was cancelled at the request of the author. On April 14, 2010, the bill was amended and re-referred to the Committee on Business, Professions and Consumer Protection, read a second time and amended. On April 15, the bill was re-referred to the Committee on Appropriations.

8. Regulations – Nothing new to report.

9. Personnel – Student Assistant Ichikawa will be returning to work next week.

10. Roundtable-

Regional Director Capuyan and Assistant General Counsel Blanco will be meeting with Mr. Solaria of the Mexican Consulate to finalize a draft Memorandum of Understanding regarding payments to discriminates living in Mexico.

The Regional Offices will begin filing motions to close outstanding compliance cases next month.

The public meeting adjourned at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.