

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 23, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: Assistant General Counsel Blanco
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Heyck, Wender and Robinson, Analyst Massie, and
Student Assistant Ichikawa
Others: Jayme Wiebold, Student Intern with California Research Bureau

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for June 2, 2010, were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chairman Report:** Member Shiroma and General Counsel Lee attended the Labor and Workforce Development Agency senior management meeting where development of the governor's transition plan was discussed. Member Rivera-Hernandez attended the Workforce Planning Meeting where employee retention strategies were discussed. The ALRB Accounting Officer will be asked to provide a quarterly budget update on July 7, 2010.
4. **General Counsel Report:** Inquiries regarding leasing office space within other state agencies in the El Centro area proved fruitless. Alternative sites for the El Centro office will continue to be explored. The Visalia Regional office lease is nearing the end of the "hard lease." Department of General Services is seeking a larger space to accommodate staff. Pursuant to its latest lease, construction to create room to accommodate staff in the Salinas Regional Office will begin soon. The General Counsel has requested the expansion of interpreter contracts to include indigenous languages of Mexico and a specified turn-around time for written translations. The Salinas Regional Office, in conjunction with Catholic Social Services of Sacramento, conducted an outreach event in Yolo County. The Visalia Regional Office has made contact with a group that provides housing to the Mixtec

population and is seeking outreach opportunities. The ALRB plans to participate in the Mexican Consulate's annual Labor Rights Week activities. This year's focus is on sexual harassment and indentured servitude. Department of Fair Employment and Housing (DFEH) cross-training will occur this summer at the DFEH Fresno office. Dates for cross-training of California Rural Legal Assistance employees are being explored.

At the request of Assistant General Counsel Blanco, the Board voted 3-0 to approve the expenditure of up to \$20,000 to reprint brochures the Regional Office staff provides to farmworkers and employers to explain their rights and responsibilities.

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, 2007, 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. On October 28, 2009, the Board issued its decision in 35 ALRB No. 7 affirming the IHE's decision and setting aside the election.

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. On June 11, 2010, the court summarily denied the petition for writ of review. The petitioner did not seek review before the Supreme Court and, therefore, this matter is now final. In accordance with the Board's decision in 35 ALRB No. 6, the decertification election in the Gallo Vineyards, Inc. case is set aside. This matter is now fully resolved and will be removed from this report.

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. On May 26, 2010, the 5th DCA summarily denied the petition for review filed by Lassen. The employer did not seek review of this ruling and the ULP matter is now fully resolved.

On June 22, 2010, the Regional Director issued a final tally of ballots.

UFCW	17
No Union	18
Unresolved Challenged Ballots	<u>1</u>
Total	36

The matter now returns to the Executive Secretary to process the election objections filed by the Employer.

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
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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. On June 10, 2010, the Board issued its Decision and Order on challenged ballots setting various matters for hearing. Also on June 10, 2010 the Executive Secretary scheduled an investigative hearing for July 26, 2010.

COMPLAINT REPORT

COMPLAINTS ISSUED

Martin Hein Ranch Company, 2009-CE-021-VIS

On June 3, 2010, the Visalia Regional Director issued a consolidated complaint against Martin Hein Ranch Company alleging that the employer laid off and refused to recall four (4) employees because they engaged in protected concerted activities in violation of Section 1152 of the Act.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

San Joaquin Tomato Growers, 93-CE-38-VI

The Executive Secretary granted the UFW's request for a prehearing conference and a continuance of the hearing.

Prehearing Conference held: June 15, 2010

Hearing: July 20, 2010

Ace Tomato Company, Inc., 93-CE-37-VI

The Executive Secretary granted the UFW's request for a prehearing conference and a continuance of the hearing.

Prehearing Conference held: June 15, 2010

Hearing: July 20, 2010

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

Hearing: July 26, 2010

Deardorff Family Farms, 2009-CE-057-VIS

Prehearing Conference: July 20, 2010

Hearing: August 3, 2010

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

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

Transcripts have been received and the post-hearing briefs are due July 16, 2010

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

None.

CASES SETTLED OR RESOLVED:

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

The Board's issued its decision in this matter on May 4, 2010. As neither party filed a petition for writ of review with the court of appeals, this matter is now final and resolved.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Kawahara Nursery, Inc., 2010-RC-001-SAL
36 ALRB No. 3 (June 10, 2010)

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

None.

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 did not seek review of this order and the matter is now fully resolved and 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. On May 26, 2010, the 5th DCA has summarily denied the petition for review filed by Lassen. The employer did not seek review of this ruling and the matter is now final and fully resolved.

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. On May 10, 2010, petitioner filed its response to the court's request. On May 18, 2010, the Supreme Court transferred this case from the 3rd DCA to the 1st DCA for consideration. On June 11, 2010, the court summarily denied the petition for writ of review. The petitioner has ten (10) days to file a petition for hearing with the Supreme Court (June 21, 2010).

Miscellaneous

Transparency Plan: The ALRB's transparency plan was sent to the Office of the Inspector General on June 10, 2010.

The master calendar and upcoming due dates were discussed.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures; The committee met with Steve Guida on June 8th regarding settlement and compliance reports. Legal templates for the regions will be the next topic of discussion. Member Shiroma is drafting new outreach time-tracking categories. Analyst Massie reported on the monthly webmasters meeting.
- b. Policy Committee Report— Sick leave and bereavement leave policy approvals are due July 1. Approvals regarding the attendance policy revision are pending.

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 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. On May 27th the bill was passed out of committee. On June 2, the bill was read a third time, passed on a 22-10 vote, and was sent to the Assembly. On June 10, the bill was referred to the Assembly Committee on Labor and Employment.

8. Regulations – Nothing new to report.

9. Personnel – Field Examiner Nuño is scheduled to retire the end of this week.

10. Roundtable –

A memorial monument in the Central Valley to acknowledge the contributions of farm workers is in the latter stages of development. The monument will be known as the Santa Paula Farm Worker Monument. The scheduled date for the monument dedication and community celebration is Sunday, August 15, 2010, in Santa Paula. For further information contact Dr. Gabino Aguirre, Project Coordinator, at (801) 701-3423 or gtaguirre2002@msn.com.

Biennial Language Survey—ALJ Soble contacted the Regional Directors regarding the selection of survey weeks.

Student Assistant Ichikawa's last day will be August 12th.

ALJ Soble will continue to serve as the ALRB chair of the California State Employees Charitable Campaign with assistance from Member Shiroma.

The public meeting adjourned at 11:50 a.m.