

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**December 16, 2009**

Time: 10:07 a.m.  
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez  
General Counsel: Michael Lee  
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,  
Board Counsel Heyck, Wender and Robinson; Analyst Massie  
Others Present: Rodney Wilson, Consultant to Assemblyperson Karen Bass

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for December 8, 2009, were approved with minor changes 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** The Board, General Counsel, Deputy General Counsel and Executive Secretary represented the ALRB at the retirement reception for EDD Director Patrick Henning.
4. **General Counsel Report:** Charges continue to be filed 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:**

**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. 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 5<sup>th</sup> DCA. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief is due January 12, 2010.

**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. The IHE's decision issued September 14, 2009. The UFW filed exceptions to the IHE's decision on September 28, 2009. Reply briefs were received October 9, 2009. The matter is pending before the Board for decision.

## **COMPLAINT REPORT**

### **NEW COMPLAINTS ISSUED**

**S.M.D., 2009-CE-004-SAL**

On December 3, 2009, the Regional Director issued a complaint against S.M.D. alleging that the employer unlawfully terminated an employee because she complained to her foreman about the crew's working conditions.

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

No prehearing conferences or hearings are scheduled in 2010.

No hearings are in progress.

### **HEARINGS HELD:**

None.

### **CASES PENDING ALJ/IHE DECISION:**

None.

### **ALJ/IHE DECISIONS ISSUED:**

None.

### **CASES PENDING EXCEPTIONS OR REPLY:**

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

Exceptions due December 14, 2009

Replies due December 29, 2009

**CASES PENDING BOARD DECISION OR ACTION:**

**Henry Hibino Farms, 2009-RD-001-SAL**

Decision issued September 14, 2009

Exceptions filed September 28, 2009

Reply briefs filed October 9, 2009

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

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

**CASES SETTLED OR RESOLVED:**

**Frank Pinheiro Dairy, 2009-CE-011-VIS**

The parties have reached an informal bilateral settlement agreement. This case is now fully resolved.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

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

Decision issued December 16, 2009

**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 5<sup>th</sup> 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). A ruling on the Board's request is pending. The MMC hearing before the mediator is currently scheduled for January 6, 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.

### **Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, F058638**

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 to the petition for writ of review and request for immediate stay. 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 5<sup>th</sup> 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). A ruling on the Board's request is pending. The MMC hearing before the mediator is currently scheduled for January 6, 2010.

**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 is due January 12, 2010.

**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 is due December 11, 2009. The certified record was filed with the court on December 10, 2009. Petitioner's opening brief is due within 35 days (i.e., January 14, 2010).

**6. Special Projects**

a. Information Technology Update/Case Tracking System—The committee met on December 9, 2009 and reviewed the status of projects. Two meetings are scheduled for January. The first meeting, scheduled for January 12 from 10 a.m.-noon, will focus on complaints and compliance protocol. The second meeting is scheduled for January 19 from 10 a.m.-noon and will focus on legal templates. Work continues on trust fund and inventory tracking

b. Financial Integrity and State Managers Accountability Act (FISMA) - The Executive Secretary has received all changes to the most recent FISMA draft and those changes have been reviewed and processed. The draft, following Board and General Counsel approval, will now be forwarded to the Labor Agency for its review.

c. Policy Committee Report – The policy committee is working on new policies.

d. 35<sup>th</sup> Anniversary Conference – Executive Secretary Barbosa reported on his discussions with Professor Martin regarding the 35<sup>th</sup> Anniversary Conference. The Board approved the purchase of 35<sup>th</sup> Anniversary seals.

7. **Legislation** – No new legislation has been proposed and there have been no changes to any pending legislation.
8. **Regulations** – The revised proposed amendment to section 20236 will issue with the next ALRB Public Meeting Notice and will be posted on the ALRB website.
9. **Personnel** – The Board voted 3-0 to approve the Delegation of Authority of delegable matters in the Absence of a Quorum.
10. **Roundtable** –

The ALRB has received an invitation from Chapman College to participate in their annual Career Day.

The California State Employees Food Drive will continue through January 15, 2010.

The public meeting adjourned at 11:15 a.m.

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