

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 21, 2007

Time: 10:00 a.m.
Members Present: Chairwoman Raymundo, Members Shiroma and Rivera-Hernandez
(telephone conference)

Members Absent: None.
Staff Present: General Counsel Lee, Executive Secretary Barbosa, Board Counsels
Wender, Murray and Heyck, and Analyst Massie.
Staff Absent: None.
Others Present: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for February 7, 2007 were approved 3-0.
- 2. Public Comments:** None
- 3. Chair Budget Report:** Chairwoman Raymundo reported on the pending budget hearing.
- 4. General Counsel Report:** The Visalia Regional Office move is taking place today. The new office is located at 1642 West Walnut Avenue, Visalia, CA. The telephone and fax numbers remain the same. Eight new charges have been filed in the Visalia and El Centro Regional Offices.
- 5. Executive Officer Report:**

ELECTION REPORT

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

PENDING ELECTION MATTERS:

Artesia Dairy, 06-RC-1-VI

On February 28, 2006, the United Farm Workers filed a representation petition with the Visalia Regional Office seeking an election amongst the agricultural employees of Artesia Dairy Farms LLC in Corcoran,

CA. The employer is a dairy with approximately 45 employees. The election was held on March 7, 2006. The tally of ballots showed the following:

UFW	25
No Union	24
Unresolved Challenged Ballots	<u>15</u>
Total	64

As the number of challenged ballots was outcome determinative, the Regional Director conducted an investigation to determine whether the challenges should be sustained or overruled. Election objections, if any, were due on March 14. No objections were filed. The Regional Director issued his Challenged Ballot Report on June 12, 2006. On June 22, 2006 the employer filed its exceptions to the Regional Director's report. The Board's decision in Artesia Dairy issued August 2, 2006. A telephone conference was held October 17, 2006. The hearing on challenged ballots was held from October 24-27, 2006 in Visalia, CA. The hearing transcripts were received on November 20, 2006 and the parties' post-hearing briefs were received December 22, 2006. The IHE's decision issued January 10, 2007. Exceptions were due January 23, 2007. On January 18, 2006 the petitioner requested an extension of time to file exceptions to the IHE's decision that was partially granted. The UFW filed its exceptions on February 6, 2007. Replies, if any, are due February 16, 2007. No replies have been received to date.

Valley View Farms, 06-RD-3-VI

On July 10, 2006, agricultural employee Sergio Ozuna Lopez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Valley View Farms. The employer operates a dairy in Hanford, CA with approximately 41 employees. The election was held on July 17, 2006 and yielded the following results:

UFCW	17
No union	16
Unresolved Challenged Ballots	<u>5</u>
Total	38

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The Regional Director issued his challenged ballot report on September 5, 2006. Exceptions, if any, were due on September 15, 2006. No exceptions were filed. The Executive Secretary's issued his order making the Regional Director's Challenged Ballot Report final and directing that the ballots be processed as outlined in the report. The election case was originally to be held in abeyance pending resolution of three pending unfair labor practice (ULP) charges relating to three of the individuals whose ballots were challenged. On July 24, 2006, the employer filed objections to the election which also will be held in abeyance pending resolution of the three ULP charges. On December 5, 2006, the Executive Secretary received a notification from the Union's counsel indicating that the parties (the employer and union) had participated in the Board's mandatory mediation and conciliation process and had reached a collective bargaining agreement. As part of that agreement, the union agreed to withdraw all of its unfair labor practices, including presumably the three ULPs that were being investigated and that impacted on the election. Since the agreement, the union has withdrawn and/or dismissed the three charges in question. All that remains is the resolution of the single challenge inquiring whether Sanchez was eligible for Workers Compensation and,

if so, whether there was a position he could return to. In accordance with his report on challenged ballot, the matter will be set for investigative hearing. On December 18, 2006 the Regional Director issued a supplemental challenged ballot report recommending that the ballots of three challenged voters not be opened and counted, and that the remaining challenged ballot be set for hearing. Exceptions are due December 26, 2006. No exceptions were filed and the Executive Secretary issued an order on January 10, 2007 making the report final and informing the parties that an investigative hearing will be held at a time and place to be noticed by the Executive Secretary.

Bayou Vista Dairy, 06-RD-4-VI

On July 18, 2006, agricultural employee Alejandro Ayala filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Bayou Vista Dairy. The employer operates a dairy in Tipton, CA with approximately 80 employees. The election was held July 25, 2006. On August 2, 2006 the employer and then the union filed objections to the election which are pending before the Executive Secretary on review. On July 24, 2006, an unfair labor practice (ULP) charge alleging conduct that may impact the election was filed against the employer. Immediately following the election, the Regional Director of the Visalia Regional Office informed all parties that due to the filing of the ULP charge, he would impound the ballots cast in the election until he completes his expedited investigation of the ULP charge. On August 14, 2006 the Regional Director completed his investigation of the pending ULP and issued a complaint in this matter. On September 11, 2006 the Regional Director dismissed the decertification petition finding that employer threats made one day prior to the election created an atmosphere where it became impossible to conduct the election where employees could exercise their choice in a free and uncoerced manner. Any request for review was due September 21, 2006. No request for review was timely filed. On October 5, 2006 the Board issued an administrative order (Admin Order No. 2006-07) requesting briefing on the question whether the Regional Director exceeded his authority by dismissing the underlying election petition after the election had been conducted. The regional director filed his responsive brief on October 20, 2006. Replies, if any, were due October 27, 2006. No replies were received. The Board issued its decision on this matter on November 14, 2006 reversing the Regional Director's decision to dismiss the petition, reinstating the petition and ordering the Regional Director to proceed with the opening and counting of the ballots. On November 29, 2006 the Regional Director opened and counted the ballots and issued a final tally:

UFCW Local 1096	34
No Union	42
Unresolved Challenged Ballots	<u>5</u>
Total	81

As the unresolved challenged ballots were insufficient to affect the results of the election, the Executive Secretary screened the Employer's and Union's objections and issued his order on November 30, 2006 setting one election objection for hearing. The investigative hearing is scheduled for January 9, 2007. On December 29, 2006 the Employer filed a motion for a six-week continuance of the hearing that was denied by the Executive Secretary on January 2, 2007. A one-day hearing was held on January 9, 2007. On February 1, 2007 the IHE issued his decision in this matter recommending that the election be set aside due to election misconduct. Exceptions were due February 13, 2007. As neither party timely filed exceptions, the Executive Secretary issued his order making the IHE's decision final on February 20, 2007. This matter is now fully resolved.

LE Cooke Company, 07-RD-1-VI

On January 26, 2006, agricultural employee Fermin Ayala filed a decertification petition with the Visalia Regional Office seeking the removal of the exclusive bargaining representative United Farm Workers from L.E. Cooke Co. The employer is a wholesale nursery specializing in growing bareroot fruit trees, landscape trees, and shrubs. The employer is located in Visalia and has approximately 212 employees. An election was held on Friday, February 2 from 7:30 AM to 6 PM.

The tally of ballots is as follows:

United Farm Workers	110
No Union	61
Unresolved Challenged Ballots	<u>18</u>
Total	189

Election objections, if any, were due Friday, February 9, 2007. On February 8, 2007 the employer filed objections to the election. The objections are currently being processed by the Executive Secretary's office.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

ONE CASE ON CALENDAR:

Hess Collection Winery, 01-CE-08-SAL

A fourth prehearing conference is scheduled for February 27, 2007.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

PENDING EXCEPTIONS OR REPLY:

Artesia Dairy, 06-RC-1-VI

IHE decision issued January 10, 2007

Exceptions received February 6, 2007

Replies due February 16, 2007

CASES PENDING BOARD DECISION:

Artesia Dairy, 06-RC-1-VI

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

Bayou Vista Dairy, 06-RD-4-VI

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

UFW (Virgen/Mendoza), 04-CL-1-VI (OX)

Board decision issued on February 16, 2007.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Bayou Vista Dairy and Bayou Vista Farms West, 2006-MMC-01

The Board issued an order directing the parties to mandatory mediation and conciliation on October 19, 2006. (Admin Order No. 2006-09) The parties have been sent a list of mediators but they have not chosen a mediator yet.

D'Arrigo Bros. Co. of California, 2007-MMC-01

On January 11, 2007, the UFW filed a declaration with the ALRB pursuant to Labor Code section 1164 et seq. and Board Regulation 20400 indicating that the UFW and D'Arrigo Bros. Co. of California have failed to reach a collective bargaining agreement and requesting that the Board issue an order directing the parties to mandatory mediation and conciliation (MMC). On January 17, 2007, the D'Arrigo timely filed an answer to the UFW's declaration pursuant to section 20401 of the Board's regulations. On January 24, 2007 the Board issued its decision in D'Arrigo Bros. Co., 33 ALRB No. 1 (2007-MMC-01) directing the parties to mandatory mediation and conciliation. On January 9, 2007 the parties selected C. Allen Pool as the mediator in this case. On February 6, 2007, the UFW filed its identification of issues in dispute. On February 8, 2007, the employer filed its motion to strike the UFW's identification of issues in dispute. On February 9, 2007, the UFW filed its opposition to the employer's motion to strike. On February 14, 2007, the Board referred the initial motion and opposition to the assigned mediator for ruling. (Admin. Order No. 2007-01.) The matter is pending a ruling by the mediator on the procedural issues.

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

This lawsuit, which challenges the constitutionality of the mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was originally filed on February 24, 2002 in the Sacramento County Superior Court. Initially the court ruled that the matter was not ripe for adjudication. Following the issuance of a decision fixing the terms of a collective bargaining agreement in the Hess Collection Winery matter (see below), the plaintiffs filed an amended complaint in the Sacramento County Superior Court. On December 22, 2003, a demurrer and request for a stay of the

matter pending the resolution of a related case (Hess) was filed on behalf of the Board. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing. As the issues raised in this lawsuit were decided adversely to WGA in the Hess Collection Winery v. ALRB case, this case will either be dismissed voluntarily or be subject to a motion to dismiss.

D'Arrigo Bros. of California, D048904

On June 29, 2006 the petitioner D'Arrigo Bros. of California filed a petition for writ of review with the Fourth Appellate District, Division One. On July 7, 2006 the court sent a letter to the parties directing that the record be prepared within ten (10) of the notice. On July 11, 2006, the ALRB filed a motion for extension of time to file the certified record to August 16, 2006, which was granted by the court on July 18, 2006. The record was filed with the court on August 16, 2006. The petitioner filed its opening brief on December 14, 2006. The Board filed its response brief on February 21, 2007. The reply brief is due within 25 days (i.e., March 19, 2007).

D'Arrigo Bros. of California v. ALRB, Case No. D050270

On February 13, 2007, the employer filed a petition for writ of mandate, prohibition, certiorari, or other appropriate relief and application for immediate stay of mandatory mediation proceedings. On February 14, 2007 we received a notice from the court directing us to file the certified record within ten (10) days.

D'Arrigo Bros. of California v. United Farm Workers, Case No. ECU03346

On November 1, 2006 the employer filed a complaint for declaratory and injunctive relief with the Imperial County Superior Court. On January 29, 2007, the UFW filed its answer to the complaint.

6. Special:

Case Statistics Tracking System/Website Update – Steve Guida made a final presentation of the case tracking system on February 16. Training on the database will take place on Tuesday, February 27, 2007. A follow-up meeting regarding tracking of AERF and compliance cases will be scheduled in the near future. A protocol will be developed for users of the case tracking system.

Legislation – AB 309 (Tran)—State boards and commissions: salaries: suspension.

This bill would specify that members appointed to specified state boards and commissions shall receive no salary for the 2007-08, 2008-09, and 2009-10 fiscal years, except that they may receive a per diem payment set pursuant to these provisions during that time.

Regulations – Proposed Amendments to Regulations 20299, 20363, and 20407 (Senior Board Counsel Wender) No comments have been received on the proposed amendments to Regulation sections 20299, 20363 and 20407.

7. Roundtable:

The next regularly scheduled Board meeting will be held on February 28, 2007.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.