

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 28, 2007

Time: 10:00 a.m.

Members Present: Chairwoman Raymundo, Members Shiroma and
Rivera-Hernandez

Members Absent: None.

Staff Present: General Counsel Lee, Executive Secretary Barbosa,
Board Counsels Wender, Murray and Heyck

Staff Absent: Analyst Massie.

Others Present: None.

OPEN SESSION

1. Approval of Minutes: The Board minutes for February 21, 2007 were approved 3-0.

2. Public Comments: None

3. Chair Budget Report: Chairwoman Raymundo reported that Accounting Officer Davis will implement the new automated travel claims system at the beginning of FY 07-08.

4. General Counsel Report: General Counsel Lee reported that the Visalia Regional Office move is complete. The new office is located at 1642 West Walnut Avenue, Visalia, CA. The telephone and fax numbers remain the same. In addition Mr. Lee reported that several new charges have been filed in the Visalia regional office

5. Executive Officer Report:

ELECTION REPORT

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

Executive Secretary Barbosa reported that he was informed by the Visalia regional office that a new NA/NO had been filed but that he did not have the details of this filing yet and would inform the Board as soon as he received an update.

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 and employer both filed their exceptions on February 6, 2007. Both parties also filed their replies on February 16, 2007. The matter is now before the board for decision.

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.

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

Hess Collection Winery, 01-CE-08-SAL

A fourth prehearing conference was held February 27, 2007. A fifth prehearing conference is scheduled for April 4, 2007 with the hearing continued to May 8, 2007.

HEARINGS HELD:

None.

ONE CASE ON CALENDAR:

Hess Collection Winery, 01-CE-08-SAL

Hearing scheduled for May 8, 2007.

CASES PENDING ALJ/THE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

Artesia Dairy, 06-RC-1-VI

IHE decision issued January 10, 2007

Exceptions received February 6, 2007

Replies received February 16, 2007

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

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. UFCW president Pete Maturino informed the agency that the owner has sold all his cattle and is terminating the dairy as of February 28, 2007. The new owners are also a dairy. Mr. Maturino is stilling waiting for information from the present owners to begin effects bargaining.

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 5, 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., Case No. 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, Case No. 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 23, 2007 the Board filed the certified record and its preliminary opposition. Real Party in Interest UFW filed its preliminary opposition on February 26, 2007. On February 23, 2007 petitioner filed its supplemental request for order and/or clarification regarding stay of mandatory mediation proceedings. The matter is now pending before the court for ruling.

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. On February 27, 2007 UFW counsel Tom Lynch informed the Executive Secretary that the employer has filed a request for voluntary dismissal of the lawsuit.

6. Special:

Case Statistics Tracking System/Website Update – Steve Guida made a final presentation of the case tracking system on February 16, 2007. Training on the database took 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. The system will be operational on March 1, 2007.

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. On February 26, 2007, the bill was referred to the committee on Business and Professions.

SB 971 (McClintock)- Bureaucracy Realignment and Closure Act – This bill was introduced on February 23, 2007 and would establish the Bureaucracy Realignment and Closure Commission. Beginning on January 1, 2008

, recommendations for the closure or realignment of state bureaucracies would be required to be developed for consideration by the commission. It would require the commission to independently evaluate the recommendations, conduct 3 public hearings, and, by January 1, 2009, have at least one member of the commission visit each state bureaucracy considered for realignment or closure. The commission's recommendations would be presented to the Governor and Legislature and, if approved by the Governor, the recommendations would be prepared as a reorganization plan and submitted to the Legislature.

Delegation of Authority to Seek Injunctive Relief—Senior Board Counsel Wender presented a draft delegation of authority to the General Counsel to seek injunctive relief pursuant to section 1160.4 of the ALRA. The Board voted 3-0 to approve a delegation. The delegation was signed by the Board Members and General Counsel. The agreement authorizes the General Counsel to seek injunctive relief in all cases which, in the discretion of the General Counsel, warrant such relief. Board approval for such requests will no longer be required and the delegation agreement is in effect immediately.

Regulations – Proposed Amendments to Regulations 20299, 20363, and 20407 –

No comments were received on the proposed amendments to Regulation sections 20299, 20363 and 20407. The Board voted 3-0 to approve the amendments. Senior Board Counsel Wender will prepare the final statement of reasons and other documents necessary to complete the rulemaking file, which will be submitted to the Office of Administrative Law (OAL). OAL will then have 30 working days to review the amendments, and if approved they will be filed with the Secretary of State's office, and will take effect 30 days following filing.

Disaster Preparedness Update

– Assistant General Counsel Ed Blanco and Board Member Rivera Hernandez provided an update on recent meetings they have attended on this issue. The General Counsel's office has been looking into alternate methods of communication for staff in situations where cell phones are not operating. Also under consideration is a web-based email system for use in situations where the agency server is not

operational. The Board discussed a telecommuting policy. The Board will also hold workshops for staff to review the ALRB's disaster preparedness/ continuation of government plan.

ALRA Conference (Northern CA in July 2009) – Paul D. Roose of the CA State Mediation & Conciliation Service was recently contacted by Bob Hackel, a member of the Executive Committee of Association of Labor Relations Agencies (ALRA), about the possibility of having the ALRA annual meeting in northern CA in July 2009. To ascertain interest in doing this, Mr. Roose has contacted members of ALRA in Northern California and is inquiring whether each organization is willing to be part of a host committee, work on logistics, arrange for local speakers etc. The CA State Mediation & Conciliation Service and Federal Mediation and Conciliation Service are prepared to make such a commitment. The ALRA Executive Committee is meeting on March 17 to decide this so he needs our response by March 16, 2007.

Board Decision Summary – The Board discussed developing a general package to provide to the public and media when a Board decision and order is issued. The package may include a brief fact sheet in addition to the existing case summary and decision. The Board also discussed the protocol for responding to inquiries from the media about Board decisions.

7. Roundtable:

The next regularly scheduled Board meeting will be held on March 7, 2007.

Ethics training must be completed by designated personnel by June 1, 2007.

Form 700 filers must provide their completed forms to the Executive Secretary by March 15, 2007.

General Counsel Lee and Board Member Shiroma reported that they attended the annual California Farm Bureau reception on Tuesday, February 27, 2007.

The public meeting adjourned at 12:10 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.