

STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD

BOARD MEETING MINUTES

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

April 4, 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, Heyck and Murray; Analyst Massie
Staff Absent:
Others Present: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for March 7, 2007 were approved 3-0 with minor changes.
- 2. Public Comments:** None
- 3. Chair Budget Report:** Chairwoman Raymundo reviewed the status of the current budget. Purchasing and contracts need to be reviewed before the end of the fiscal year.
- 4. General Counsel Report:** General Counsel Lee reported that the UFW and the Visalia Regional Office are trying to work out parameters of the union's notice to employees regarding *Breaux* rights. The General Counsel's office will be filing an appeal in the Fifth District Court of Appeals regarding superior court ruling in Tuls Ranch.
- 5. Executive Officer Report:**

ELECTION REPORT

NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):
None.

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. On March 30, 2007, the regional director issued a second supplemental challenged ballot report. Exceptions are due within 5 days, i.e., April 9, 2007. The regional director is recommending dismissal of the one unresolved challenged ballot.

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. On March 8, 2007 the Executive Secretary issued an order dismissing the objections. As the employer did not seek review of this ruling, the Executive Secretary issued a certification of representative on March 22, 2007. This matter is now fully resolved.

Henry A. Garcia Dairy, 07-RC-1-VI

On March 9, 2007, UFCW International Union, Local 5, filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Henry A. Garcia Dairy. The employer is a dairy located in Tulare with 21 employees.

An election was held on Friday, March 16, 2007. Six votes were cast without challenge and there are eleven unresolved challenged ballots. After the election, the Regional Director decided to impound the six unchallenged ballots pending resolution of the challenged ballots. On March 23, 2007 the employer filed objections to the election. The matter is pending resolution of the unresolved unfair labor practice charges affecting the election and screening of the employer's election objections.

COMPLAINT REPORTS

TWO NEW COMPLAINTS ISSUED:

Aukeman Farms, 06-CE-35-VI

March 6, 2007

Bos Farms, 06-CE-57-VI

March 29, 2007

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Hess Collection Winery, 01-CE-08-SAL

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/IHE 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.) On March 2, 2007 the mediator denied the employer's motion to strike the union's identification of issues. The mediation will begin on May 10, 2007.

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 March 19, 2007. On March 2, 2007, the petitioner filed an application for an order extending time to file reply brief to April 9, 2007 that was granted by the court. The reply brief is now due April 9, 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. Real Party in Interest UFW filed its preliminary opposition on February 22, 2007. On February 23, 2007 the board filed the certified record and preliminary opposition. On February 23, 2007 petitioner filed its supplemental request for order and/or clarification regarding stay of mandatory mediation proceedings. On February 28, 2007 the court summarily denied the petition. Any petition for review is due March 12, 2007. As the petitioner did not seek review of the court's ruling, this matter is now fully resolved.

6. Special:

Case Statistics Tracking System/Website Update – Member Shiroma reported on meetings held with Steve Guida. There will be a meeting with Steve Guida tomorrow at 10 a.m. Mr. Guida will provide an estimate for tying together case tracking and time reporting and on-going maintenance. Website redesign will commence after case tracking project is completed.

ALRA Conference (Executive Secretary Barbosa)

Paul Roose of the California Mediation and Conciliation Services is seeking a representative from the ALRB to participate in the planning of the 2009 ALRA conference. The tentative meeting for April 11 and 12th has been canceled. Chairwoman Raymundo indicated that the ALRB is unable to send a representative at this time and has informed Secretary Bradshaw of Mr. Roose's request and the Board's lack of resources.

El Centro Regional Office Lease (Chairwoman Raymundo): A two-year lease is being negotiated.

Excluded Employee Leave Buy Back Program (Personnel Officer Kojima): DPA and Finance have authorized the Excluded Employee Leave Buy Back Program. DPA has limited buy-back to 40 hours. Ten employees are eligible to participate. Requests must be submitted between April 1 and June 30, 2007.

Electronic Distribution of Weekly Agenda Notices (Board Member Cathryn Rivera-Hernandez): Board Member Rivera-Hernandez met with Mary Kames and Greg Campbell from Speaker Nunez' Office, at their request, to discuss expediting information on our case and election activity. Speaker Nunez' office would like to receive electronic copies of our weekly agenda. A notice will issue with the next public meeting notice offering electronic distribution of the weekly agenda to subscribers.

Injury and Illness Prevention Policy (Board Counsel Heyck): Board Counsel Heyck will draft a combined infectious disease control and heat illness prevention policy for the Board's review.

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.

Card Check Procedures: Chairwoman Raymundo requested Executive Secretary Barbosa provide information on the federal and Canadian card check procedures and report to the Board.

7. Roundtable:

Follow up emails are being sent to all employees who have not turned their Form 700, asbestos notification form.

The ALRB received the Red Shoe, Platinum and Silver awards in recognition of participation in the United State Employees Campaign.

The public meeting adjourned at 11:10 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.