

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 6, 2007

Time: 10:00 a.m.
Members Present: Chairwoman Raymundo, Members Shiroma and Rivera-Hernandez
Members Absent: None.
Staff Present: Executive Secretary Barbosa, Board Counsels Wender and Heyck;
Analyst Massie, General Counsel Lee and Assistant General Counsel
Blanco
Staff Absent: Board Counsel Murray
Others Present: None

OPEN SESSION

1. **Approval of Minutes:** Approval of the minutes was postponed until the next meeting.
2. **Public Comments:** None.
3. **Chair Budget Report:** Chairwoman Raymundo and Analyst Massie reported on the current status of replacement equipment purchases. Chairwoman Raymundo, Executive Secretary Barbosa and Board Counsel Wender reported on the Labor Agency meeting held on June 5, 2007.
4. **General Counsel Report:** Charges continue to be filed in Salinas and Visalia.
5. **Executive Officer Report:**

ELECTION REPORT

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

PENDING ELECTION MATTERS:

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. As no exceptions were filed, the Executive Secretary issued an order making the supplemental challenged ballot report final on April 12, 2007. On April 13, 2007 the regional director issued a final tally showing the following results:

UFCW	17
No union	16
Unresolved Challenged Ballots	<u>0</u>
Total	33

On May 4, 2007 the Executive Secretary issued his order on election objections. The request for review was due May 14, 2007. None was timely filed. A hearing is scheduled for June 18, 2007.

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.

Jim Nace Dairy, 07-RD-3-VI

On May 25, 2007 agricultural employee Raul Camarena Lopez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 5, at Jim Nace Dairy. The employer operates a dairy in Tipton, CA with approximately 18 employees. The election was held on June 1, 2007 and yielded the following results:

UFCW	6
No union	11
Unresolved Challenged Ballots	<u>0</u>
Total	17

Election objections, if any, are due June 8, 2007.

COMPLAINT REPORTS

THREE NEW COMPLAINTS ISSUED:

Artesia Dairy, 07-CE-28-VI

The Regional Director alleged that the Employer is engaging in a technical refusal to bargain case to test the certification.

Aukeman Farms, 06-CE-35-VI

The Regional Director issued an order consolidating unfair labor practice and compliance proceedings on May 31, 2007. The complaint alleged that the employer allegedly fired an employee because he engaged in protected concerted activity. The backpay specification alleges that the affected discriminate is owed \$17,900 in backpay.

Pacific Coast Mushrooms, 06-CE-1-SAL

The Regional Director issued a complaint on May 7, 2007 alleging that the employer has failed and refused to recognize and bargain with the certified bargaining representative.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Vincent B. Zaninovich & Sons, 06-CE-62-VI

Prehearing: August 20, 2007

Hearing: September 24, 2007

HEARINGS HELD:

None.

TWO CASES ON CALENDAR:

Vincent B. Zaninovich & Sons, 06-CE-62-VI

Prehearing: August 20, 2007

Hearing: September 24, 2007

Valley View Farms, 06-RD-3-VI

Hearing: June 18, 2007

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

None.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

Paramount Farming Company, 05-CE-02-VI

The parties reached an informal bilateral settlement agreement. Respondent will request that its farm labor contractors not discriminate against hiring two employees and will pay backpay in the amount of \$11,260 to two employees.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

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.

On April 27, 2007 the employer filed a request for a 30-day continuance of commencement of the mandatory mediation process that was denied by the Board on May 3, 2007. The mediation commenced on May 10, 2007 and is in progress. On June 2, 2007 the parties requested that the 30-day timeline for the MMC process be extended to July 9, 2007 that was approved by the mediator.

COURT LITIGATION:

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 was filed April 9, 2007. On

April 11, 2007 the court issued a writ of review and requested that the board file the record in this case. On April 16, 2007, the Executive Secretary informed the court that the record had been filed on August 16, 2006. The matter is pending oral argument or decision.

D'Arrigo Bros. of California, USDC, Southern District, 07CV707-BEN(CAB)

The Employer filed a complaint with the United States District Court, Southern District seeking to enjoin the mandatory mediation process on the basis that such process violated the provisions of ERISA. The Board filed a motion to dismiss on May 2, 2007. The hearing on the Board's motion to dismiss is scheduled for June 11, 2007. The UFW filed a motion to intervene and answer to the complaint on May 3, 2007. On May 9, 2007, D'Arrigo filed a motion for Preliminary Injunction and an Ex Parte Application to Shorten Time to hear the motion. The Court denied the ex parte application on May 17, 2007. On May 25, D'Arrigo filed its Opposition to the Motion to Dismiss. On May 25, the Board filed its Reply to Opposition to Motion to Dismiss. On May 25, D'Arrigo filed a Motion for a Preliminary Injunction. The hearing on that motion is scheduled for June 25.

6. Special:

Legislation (Senior Board Counsel Wender) –

SB 180 (Migden)—Labor Representatives: Elections

This bill, as amended on April 9, would amend the Agricultural Labor Relations Act (Lab. Code § 1140, et seq.) to (1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; (2) create penalties, under specified circumstances, for the commission of unfair labor practices; and (3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief. On April 17, 2007, the bill was withdrawn from committee and re-referred to the Committee on Rules. On April 19, 2007, the bill re-referred to the Committee on Labor & Industrial Relations and the Committee on Rules and set for hearing on April 25, 2007. On April 30, 2007, the bill was passed out of the Committee on Labor & Industrial Relations (3-2 vote) as amended, but first to be amended and re-referred to the Committee on Rules. The bill was amended on May 1, 2007 to eliminate the proposed provisions that would have provided for liquidated damages for specified ULPs and would have set a minimum bargaining makewhole award. On May 3, the bill was re-referred to the Committee on Appropriations. On May 14, the bill was heard in committee and passed as amended by a 10-6 vote.

The Labor and Workforce Development Agency has taken a position on this bill. The Agricultural Labor Relations Board has historically not taken positions on legislation and does not take a position on this bill. The Board will provide analysis upon

request. The Labor and Workforce Development Agency requested and was provided an analysis of this bill.

On May 21, 2007, SB 180 passed on the floor of the Senate by a 24-15 vote. On June 4 the bill was sent to the Assembly Committee on Labor and Employment

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 April 12, the bill was amended to drop from the specified list of affected boards and commissions the Board of Prison Terms, the Narcotic Addict Evaluation Authority, and the Youth Authority Board. On April 16, 2007, the bill was referred to the Committee on Business and Professions.

Case Statistics Tracking System and Web Site Updates (Board Member Shiroma, Analyst Massie) – The first phase of case tracking has been completed. Board Member Shiroma and Analyst Massie updated the Board on the status of the website redesign. A draft of the proposed website redesign will be available before the end of the month. The bidding process for Phase 2 of the case tracking system will close on June 8.

Referrals to the Economic & Employment Enforcement Coalition (Chairwoman Raymundo and General Counsel Lee) – The Board discussed the interest expressed by the Economic & Employment Enforcement Coalition in obtaining evidence in the Board's administrative records of possible violations of, inter alia, wage and hour laws. The Board observed that its records, such as transcripts, are public records subject to disclosure and that any requests for such records must be granted. Therefore, the Board determined that any such requests, including a standing request, would be honored. In addition, even in the absence of a request, it would be appropriate in cases that are final to refer evidence of violations of other laws to the appropriate agencies. The General Counsel will set his own referral policies for the regional staff.

Realignment of Resources in El Centro Region (Chairwoman Raymundo and General Counsel Lee) – After performing a review of agency workload with the General Counsel, it was determined that a more efficient use of resources is to assign cases out of the Visalia Regional Office to the El Centro staff. The Board voted 3-0 to approve the realignment.

Public Service Announcements (Cathryn Rivera-Hernandez) – Univision has contacted the agency regarding heat-illness PSAs. The heat-illness PSA will be distributed to Univision as well as Spanish-speaking radio stations. In light of the need to provide information to the Punjabi-speaking community, the agency will create and distribute PSAs in the Punjabi language.

7. **Personnel** – Nothing new to report.

8. **Roundtable** -- Nothing new to report.

The next Board meeting is scheduled for June 20, 2007.

The public meeting adjourned at 11:40 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.