

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

July 23, 2008

Time: 10:00 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary
Barbosa & Analyst Massie

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for July 8, 2008 were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chairman Report:** Board Counsel Heyck and Chairman Almaraz inventoried the outreach materials in storage. Outreach materials will be ordered from the warehouse to replenish the Headquarters supply for upcoming outreach events. Board Counsel Robinson attended the California State Employees Charitable Campaign meeting. The campaign kickoff is scheduled for September 1. Staff will meet next week to discuss campaign activities.
4. **General Counsel Report:** None.
5. **Executive Officer Report:**

ELECTION REPORT:

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

The UFW filed NAs at the following employers:
Reiter Berry Farms, Inc., July 10, 2008
Ortega Berry LLC in Watsonville, July 11, 2008
Giumarra Vineyards Corp., July 14, 2008
Giumarra Vineyards Farms, July 14, 2008

PENDING ELECTION MATTERS:

Gallo Vineyards, Inc., 07-RD-1-SAL

On June 18, Roberto Parra filed a decertification petition seeking to remove the United Farm Workers of America as the exclusive bargaining representative of Gallo’s agricultural employees in Sonoma County. The petition lists the approximate number of employees in the unit as 400. The election was held on June 25, 2007 and yielded the following results:

UFW	95
No union	125
Unresolved Challenged Ballots	<u>12</u>
Total	232

On July 2, 2007 the UFW filed objections to the election. The objections will be held in abeyance pending resolution of ulps mirroring the election objections. On October 5, 2007 the Regional Director dismissed three overlapping charges (07-CE-23-SAL, 07-CE-25-SAL and 07-CE-26-SAL). On October 18, 2007, the UFW filed a request for review of three of the four charges. On November 16, 2008, the General Counsel affirmed the Regional Director’s dismissal of the three charges. On February 5, 2008 the Salinas Regional Director and Employer reached an informal settlement agreement resolving the allegations of the remaining charge, 07-CE-24-SAL. The UFW filed a request for review of the agreement. The request for review was denied by the General Counsel on March 10, 2008. On June 6, 2008, the Executive Secretary issued his order on election objections in Gallo Vineyards, Inc., 07-RD-1-SAL. He set one objection for hearing and dismissed the rest. The UFW filed a request for review of the partial dismissal and the case has been transferred to the Board. The hearing on the sole objection, originally set for August 26, 2008, has been continued to September 9, 2008.

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 so that a final tally can be obtained. A ruling on the objections will follow as soon as a final tally has issued.

Mayflower Companies et al., 07-RC-7-VI

On December 7, 2007, UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Mayflower Companies et al. The employer is a dairy located in Pixley with approximately 31 employees. The election was held on Friday, December 14, 2007 with the following tally:

UFCW	11
No Union	20
UCB's	<u>1</u>
Total	32

The UFCW filed objections on December 12, 2007. The objections are being held in abeyance pending investigation of overlapping ULPs. On February 4, 2008, the employer filed a motion to dismiss the objections alleging the union had neglected to serve the employer's legal representative. The UFCW filed a reply to the motion on February 12, 2008. On February 15, 2008, the acting Executive Secretary denied the motion to dismiss. The request for review was filed February 28, 2008. On March 7, 2008 the Board denied the employer's request for review. The matter is now pending resolution of the overlapping ULPs. The Regional Director anticipates meeting on the overlapping ULPs next week with a resolution to follow soon.

L.E. Cooke Company, 08-RD-001-VIS

Agricultural employee Fabian Betanzos filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent representative, UFW, at L.E. Cooke Company. The employer is a bare tree nursery in Visalia with approximately 136 employees. An election was held on April 9, 2008 with the following results:

UFW	53
No Union	57
UCBs	<u>12</u>
Total	122

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. On June 2, 2008, the Visalia Regional Director issued his report on challenged ballots in LE Cooke Company. Of the 12 challenges lodged, the Regional Director recommended that 9 challenges be overruled and the ballots opened and counted and that 3 ballots be held in abeyance to be set for hearing should the ballots be outcome determinative after a revised tally of ballots issues. No request for review was filed; therefore the ES issued an order making the report final on June 24, 2008 and directing the RD to issue an amended or final tally, as appropriate. On June 30, 2008, the Regional Director opened and counted nine (9) challenged ballots and issued a final tally:

UFW	53
No Union	66
UCBs	<u>3</u>
Total	122

The three remaining unresolved challenged ballots are insufficient to affect the outcome of the election. The Executive Secretary will now proceed with the screening of the Union's election objections.

Vista Vineyard Management, LLC, 2008-RD-001-SAL

Agricultural employee Cecilio Samario filed a decertification petition with the Visalia Regional Office on June 11, 2008 seeking to decertify the incumbent representative, UFW, at Vista Vineyard Management, LLC. The employer is a wine grape grower in St. Helena with approximately 65 employees. The election was held on June 18, 2008. The Regional Director impounded the ballots due to pending related unfair labor practice charges. On July 1, 2008 the Acting Executive Secretary issued his order holding the election objections in abeyance pending investigation of six (6) related unfair labor practice charges. On June 25, 2008, the UFW filed objections to the election.

George Te Velde dba The Oaks Ranch, Rocking S. Dairies, 2007-UC-001-VI
UFCW Local 5 filed a unit clarification petition seeking to clarify the bargaining unit designated in its certification of July 23, 2007 to now include the employees of The Oaks Ranch. The union alleges that The Oaks Ranch is a single employer with Rocking S. Dairies. On May 19, 2008, the Regional Director set this matter for hearing for July 28, 2008. On June 10, 2008, the Respondent requested a continuance of the hearing. The motion was referred to the ALJ, who granted the motion and issued an order setting the hearing for September 3, 2008.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Seven (7) hearings are currently scheduled:

Wolf Farming Co. of CA, 06-CE-28-VI

Prehearing held June 17, 2008

Hearing scheduled July 30, 2008

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI

Prehearing scheduled August 5, 2008

Hearing scheduled August 19, 2008

The Hess Collection Winery, 99-CE-23-SAL

Prehearing scheduled July 29, 2008

Hearing August 26, 2008

The employer may be filing a motion for continuance of the hearing.

George Te Velde dba The Oaks Ranch, Rocking S. Dairies, 2007-UC-001-VI

Prehearing scheduled August 15, 2008

Hearing scheduled September 3, 2008

Gallo Vineyards, Inc., 07-RD-1-SAL

Hearing scheduled September 9, 2008

J. Lohr Vineyards, Inc., 07-CE-1-SAL

Prehearing scheduled August 5, 2008

Hearing scheduled September 23, 2008

Kirschenman Enterprises, 06-CE-78-VI
Prehearing scheduled September 18, 2008
Hearing scheduled October 20, 2008

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

Gallo Vineyards, Inc., 07-RD-1-SAL

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Gallo Vineyards, Inc., 07-RD-1-SAL

Request for Review of Partial Dismissal of Election Objections

Boschma Dairy & Sons, 2008-MMC-001

Request for Mandatory Mediation and Conciliation

BOARD DECISIONS:

None.

**REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION
LAW:**

Boschma Dairy & Sons, 2008-MMC-001

On July 18, 2008 UFCW Local 5 filed a request for mandatory mediation and conciliation. On July 22, 2008 the request was dismissed without prejudice for failure

to meet all the statutory prerequisites set forth in Labor Code section 1164, subdivision (a), namely 180 days had not elapsed from the initial request to bargain.

COURT LITIGATION

Artesia Dairy (33 ALRB No. 6)

Petition for review filed January 25, 2008. ALRB filed certified record on January 7, 2008. Petitioner's opening brief was filed March 13, 2008. The Board's response brief was filed April 16, 2008. The Real Party in Interest filed their brief on April 17, 2008. The petitioner's reply brief was filed May 12, 2008. The matter is now pending court decision or setting of oral argument.

Vincent B. Zaninovich & Sons, 06-CE-62-VI (34 ALRB No. 3)

Petition for writ of review was filed July 15, 2008. The certified record has been prepared and will be mailed on July 23, 2008.

Aukeman Farms, 06-CE-35-VI (34 ALRB No. 2)

Petition for writ of review is due July 25, 2008

6. Special Projects

- a. Information Technology Update/Case Tracking System—The committee is scheduled to meet on July 24, 2008, at 10:30 a.m. regarding Board Counsel and ALJ time tracking.

Board Member Shiroma, Executive Secretary Barbosa and Analyst Massie attended training on the Information Technology Capital Plan. The department plan is due to agency on August 11.

Executive Secretary Barbosa attended the IT Council Quarterly Meeting. The State CIO is planning seven (7) new statewide initiatives. With respect to email consolidation, California agencies currently house 150,000-200,000 email boxes using three platforms: Exchange (70%), Lotus Notes (20%) and GroupWise (10%). Under the current system there is no common address book, each system has different security issues and there is a lack of standards as to all. The State is moving toward a uniform email system that will be standardized in look and feel, common infrastructure, and improved security with overall cost reduction. The consolidation team is being developed and will be in place by mid-August.

With respect to E-mail Security (E-Hub), the CIO is seeking to implement Dual E-Mail hubs for mail hygiene. Currently, all email sent from our computers travels the World Wide Web and then is received by the recipient. By this process, mail can be intercepted and corrupted. Under this proposal, the mail will be sent within a hub and directed to the user. This will secure and protect the State's inbound and outbound and inter-

departmental email. It will minimize spam. According to surveys conducted, approximately 95% of all mail received by state employees is spam. The CIO will be developing uniform policies on the archival and encryption of email. The CIO will be reviewing the policies relating to e-discovery.

With respect to Information Security, the CIO is convening a team of experts to create a means for an agency to independently access its network computers.

- b. Financial Integrity and State Managers Accountability Act (FISMA)— Update on creation of ALRB policy manuals for accounting, personnel and business services. Member Rivera-Hernandez reported she will use the old ALRB Operations Manual and the EDD manuals as a starting point for reviewing the personnel policies and work with staff counsel to identify areas of the law that need updating.
- c. United Farm Workers' 18th Constitutional Convention will be held in Fresno, on August 22-24 (Fri-Sun.)--The ALRB will be attending the convention and will be hosting a booth that will have information materials for farmworkers. ALRB staff will be available to answer any questions.
- d. Agricultural Employees Relief Fund (AERF) – Board Counsel Wender reported on possible allocations and disbursements from the AERF this fiscal year.

7. Legislation

AB 2386 (Nunez) Agricultural employees: elections of labor representatives.

AB 2386 was amended on April 2, 2008. As introduced, the bill made nonsubstantive changes to section 1156.3, which governs election petitions. As amended, the prior language has been deleted and it now makes nonsubstantive changes to the AERF provisions in the ALRA and requires that the status of AERF be included in the annual report (in place of language that had required a single report in 2002). The bill passed the Assembly on May 27, 2008 and currently is pending in the Senate Committee on Appropriations, where a hearing is set for August 4, 2008.

8. Personnel

Update on Student Assistant – The Board has received several applications from interested students. Member Rivera-Hernandez is reviewing the applications and selecting the students to be interviewed. The Executive Secretary reported on his discussions with Personnel and Accounting regarding the funding for the position.

Hearing Officer Announcement – A draft announcement will be available for review by the end of this week.

9. Roundtable:

The September 17th Board meeting will be moved to Tuesday, September 16, 2008.

The public meeting adjourned at 11:55 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.