

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 6, 2008

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

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for July 23, 2008 were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chairman Report:** Data is being compiled and a first draft of the annual report for Fiscal Year 2007-08 will be circulated next week. The ALRB will conduct its biennial language survey the weeks of August 18-22 and September 15-19.
4. **General Counsel Report:** As a result of Executive Order S-09-08 suspending all personal services contracts, the hearing scheduled for the 19th of August will be postponed. Future hearings may also be rescheduled unless a budget is passed. Nine new charges have been filed since the Board last met.
5. **Executive Officer Report:**

ELECTION REPORT:

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

The following NAs were filed since the last Board meeting:

On August 1, 2008 UFCW filed an NA at Bos Farms #1 and #2.

On August 4, 2008 UFW filed an NA at Sun Pacific Farming Co.

On August 4, 2008 UFW filed an NA at Vignolo Vineyards.

The following NOs were filed since the last Board meeting:

On August 1, 2008 UFCW filed an NO at Bos Farms #1 and #2.

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. On August 5, 2008, the Executive Secretary took this matter off calendar as the Petitioner had withdrawn its unit clarification petition and the parties had reached a collective bargaining agreement that resolved the disputed unit question.

Sun Pacific Cooperative Incorporated, 2008-PM-001

On July 25, 2008 Sun Pacific Cooperative Incorporated filed a motion to deny access against the UFW. On August 1, 2008 the Board issued its decision setting this matter for hearing and telephonic settlement conference. On August 1, 2008, the Executive Secretary scheduled a settlement telephone conference for August 7, 2008, and an investigative hearing for August 26, 2008.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Six (6) hearings are currently scheduled:

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

Prehearing held August 5, 2008

Hearing scheduled August 19, 2008

Sun Pacific Cooperative Incorporated, 2008-PM-001

Settlement conference scheduled August 7, 2008 (10 AM)

Hearing scheduled August 26, 2008

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

Hearing scheduled September 9, 2008

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

Prehearing held August 5, 2008

Hearing scheduled September 23, 2008

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

The Hess Collection Winery, 99-CE-23-SAL
Prehearing scheduled July 29, 2008
Hearing November 4, 2008

HEARINGS HELD:

Wolf Farming Co. of CA, 06-CE-28-VI
Hearing held July 30 & 31, 2008

CASES PENDING ALJ/IHE DECISION:

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

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

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

CASES SETTLED OR RESOLVED:

George Te Velde dba The Oaks Ranch, Rocking S. Dairies, 2007-UC-001-VI
On August 5, 2008 the Executive Secretary took this hearing off calendar as the Petitioner had withdrawn its unit clarification petition and the parties had reached a collective bargaining agreement that resolved the disputed unit question.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Sun Pacific Cooperative Incorporated, 2008-PM-001

BOARD DECISIONS:

Sun Pacific Cooperative Incorporated
34 ALRB No.4 (2008-PM-001)

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

None.

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 was filed July 24, 2008. The petitioner's opening brief is due within 35 days.

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

Petition for writ of review was filed July 25, 2008. On July 31, 2008 the court issued an order staying the Board's decision in this case. The certified record was filed on August 4, 2008. The petitioner's opening brief is due within 35 days.

6. Special Projects

- a. Information Technology Update/Case Tracking System—The Board Counsel time tracking spreadsheet was reviewed at the last committee meeting and updates were provided. Development of the system should be completed next week. Testing will be conducted and training of regional office staff will commence the week of September 2.

The ALRB's IT Capital Plan is nearing completion and will be submitted to Agency by August 11, 2008.

The eServices Office will hold their first "Email Administrators Forum" in Sacramento on August 19, 2008 with department CIOs, email administrators, and network administrators. The purpose of the meetings is to discuss the transition of State departments moving to a consolidated email system, and to provide a way for email administrators to share best practices, issues, and concerns.

The ALRB's custom search engine was one of four custom State search engines demonstrated at eServices' August Webmaster User Group meeting.

- b. Financial Integrity And State Managers Accountability Act (FISMA)—Member Rivera-Hernandez reported on her progress with the operational manuals.
- c. The United Farm Workers' 18th Constitutional Convention will be held in Fresno, on August 22-24. The ALRB will be hosting a booth at the

convention that will have information materials for farmworkers. ALRB staff will be available to answer any questions.

7. Legislation

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

AB 2386, which is suspected to be a spot bill for card check legislation, was amended on April 2, 2008. As introduced, the bill made nonsubstantive changes to section 1156.3 of the Agricultural Labor Relations Act (ALRA) (Labor Code sec. 1140, et sec.), which governs election petitions. As amended on April 2, the prior language was deleted and in its place were nonsubstantive changes to the Agricultural Employee Relief Fund (AERF) provisions in the ALRA and an added requirement 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. The bill was referred to the Senate Committee on Appropriations, where it was heard and amended on August 4, 2008. The August 4 amendments retained the provision requiring that the Board include a status report on the AERF in its yearly report to the governor and legislature and added several new provisions relating to other subjects under the ALRA. Specifically, the bill would: 1) add provisions to provide for a "mediated election," wherein employees may chose the option of selecting a bargaining representative without an election or via a "ballot box election," as an additional alternative to the existing provisions providing only for secret ballot elections; mediators chosen from a list provided by the State Conciliation and Mediation Service would be assigned to each "mediated election" and would be given authority to resolve specified disputes; 2) create a penalty of up to \$20,000 under specified circumstances for the commission of specified unfair labor practices; and 3) add specified unfair labor practices to the existing list of practices that trigger a priority preliminary investigation and the mandatory obligation to seek injunctive relief. At the hearing on August 4, the bill as amended was sent to the suspense file. Hearing set for August 7, 2008.

8. Personnel

Update on Student Assistant – The Board has received 48 applications from interested students. We have conducted one interview and have identified seven applicants who we are interested in interviewing. We are reviewing the eligibility requirements for these students and, if the requirements are met, will be scheduling this group for interviews.

Hearing Officer Announcement – A draft announcement is circulating for consideration.

9. Roundtable:

The California Rural Legal Assistance Foundation is hosting a community partnership event, Luchando por Justicia: Striving for Justice for California's Rural Poor, on Wednesday, August 13, 2008 from 6:00 p.m. to 8:30 p.m. at the California Museum for History, Women & the Arts, 1020 O Street, Sacramento, CA.

The Organization of Chinese Americans will be hosting a reception at the California State Capitol on Wednesday, August 13, 2008, from 5:30 p.m. to 7:30 p.m.

The Wiley Manuel Bar Association will be celebrating the lifetime achievement of Judge Renard Shepard at Legal Fusion 2008 on Friday, August 15, 2008, from 5:30 p.m. to 9:00 p.m. at the Hilton Arden West Grand Ballroom, Sacramento, CA

The Sacramento Local Conservation Corps will be holding commencement exercises on Friday, September 12 at 11:00 a.m. at the Depot Park Conference Center, 8215 Ferguson Avenue, Sacramento, CA.

The public meeting adjourned at 11:50 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.