

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**August 20, 2008**

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

**OPEN SESSION**

1. **Approval of Minutes:** The Board minutes for August 6, 2008 were approved 3-0.
2. **Public Comments:** None.
3. **Chairman Report:** The draft annual report has been circulated for review. It is anticipated the report will be issued by the end of the month. Chairman Almaraz reported on the LWDA senior staff meeting. Planning for fundraising events continues for the State Employees' Charitable Campaign. Assistant General Counsel Blanco is investigating a possible partnership with the U.S. Equal Employment Opportunity Commission to develop outreach material.
4. **General Counsel Report:** General Counsel Lee reported six new charges have been received since the last meeting. An election is scheduled for August 22, 2008, in the Visalia region.
5. **Executive Officer Report:**

**ELECTION REPORT:**

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

**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. On July 28, 2008, the Regional Director issued a complaint against Mayflower Companies which included all but one of the allegations in the Union's election objections. The matter will remain in abeyance pending resolution of the complaint.

**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. The investigation on the pending charges is continuing.

**Bos Farms, 2008-RC-005-VIS**

On August 15, 2008, UFCW Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Bos Farms. The employer is a dairy in Tulare with approximately 28 employees. The petition is under investigation and an election, if appropriate, would be held on August 22, 2008. The union has met the showing of interest and the pre-election conference is being held on August 20, 2008.

**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. On August 15, 2008 the employer and UFW filed a joint motion withdrawing the motion to deny access and requesting that the hearing previously scheduled for August 26, 2008 be taken off calendar as the parties had reached a settlement agreement resolving all the issues raised by the motion to deny access. On August 18, 2008, the Board granted the parties' request to withdraw the motion and to take the case off calendar.

**COMPLAINT REPORT**

Two new complaints have issued:

**COMPLAINTS ISSUED****Mushroom Farms, 07-CE-60-SAL**

The Regional Director issued a complaint on July 28, 2008 (According to the complaint, the employer allegedly issued a disciplinary notice and then fired the charging party, a member of the Ranch Committee that helped negotiate a collective bargaining agreement, because he complained about the application of a work policy agreed to by the parties in the CBA.)

**Mayflower/Rio Blanco Dairy, 07CE-85-VI**

The Regional Director issued a complaint on July 28, 2008 (According to the complaint, the employer allegedly interrogated one employee and changed his working conditions, failed to pay another employee for his work on a new assignment, threatened other workers with loss of money if they voted for the union and were required to pay union dues, threatened workers with contract negotiations beginning from the current minimum wage, uttered vulgar remarks about the union secretaries, interrogated other employees about their union support, changed the working conditions of other workers, promoted employees to secure their support against the union, provided employees with new home appliances to influence their vote, issue disciplinary notices, suspensions and layoffs because affected workers joined, assisted and/or supported a labor organization or engaged in protected concerted activity.

**PREHEARING, HEARING OR SETTLEMENT CONFERENCES  
SCHEDULED:**

**Four (4) hearings are currently scheduled:**

**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  
Order Consolidating Compliance Proceedings with ULP Proceedings and Backpay  
Specification issued August 11, 2008  
Hearing scheduled October 20, 2008

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

**Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI**  
Prehearing held August 5, 2008  
*Hearing, previously scheduled for August 19, 2008, was taken off calendar for lack of  
a State budget.*

**HEARINGS HELD:**

None.

**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:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

**BOARD DECISIONS:**

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

None.

**COURT LITIGATION**

**Artesia Dairy, Case No. F054590** (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. Oral argument is scheduled for October 16, 2008 at 1:30 p.m.

**Vincent B. Zaninovich & Sons, Case No. F055640** (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, Case No. F055722** (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— Department IT Capital Plan: Work continues on designing the case tracking system. We are considering the use of a web-based system . Both Steve Guida and Stephen Wicklund will be consulted regarding General Counsel Lee's security concerns regarding a web-based system. Member Shiroma and Analyst Massie reported on the LWDA Information Technology Capital Plan meeting.
- b. Financial Integrity And State Managers Accountability Act (FISMA)— Member Rivera-Hernandez reported on the progress of the updated personnel handbook.

**7. Legislation:**

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

As introduced, the bill made nonsubstantive changes to section 1156.3 of the Agricultural Labor Relations Act (ALRA) (Labor Code § 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. On August 11, the bill passed from committee and was read a second time on August 12. On August 18, the bill was read a third time, passed the Senate, and was sent to the Assembly. On August 19, the bill was re-referred to the Committee on Labor & Employment pursuant to Assembly Rule 77.2.

**2009 Legislative Pre-Proposals:** The Board has no proposals.

**8. Roundtable:**

The Board meeting scheduled for September 16<sup>th</sup> will be held at 1:30 p.m.

The public meeting adjourned at 11:30 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**