

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**September 3, 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 20, 2008 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** The final draft of the annual report is being circulated. The CSECC committee is meeting to formalize events surrounding the campaign. A proposed budget change proposal was discussed. The Board Members and Executive Secretary reported on outreach efforts at the UFW Convention in Fresno. Assemblyman Sam Blakeslee's office invited Chairman Almaraz to participate in an educational forum focusing on businesses on the central coast.
- 4. General Counsel Report:** Nine new charges have been filed since the last meeting.
- 5. Executive Officer Report:**

**ELECTION REPORT:**

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

No new NAs have been filed. One new NO was filed by the UFW at Merrill Farms, LLC on August 21, 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 scheduled for September 9, 2008 was taken off calendar due to the lack of a State budget. The hearing on election objection will be reset once a budget is signed.

**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 Union's election objections are currently being screened by the Executive Secretary.

**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. An election was held on August 22, 2008 with the following results:

|                               |          |
|-------------------------------|----------|
| UFCW Local 5                  | 8        |
| No Union                      | 17       |
| Unresolved Challenged Ballots | <u>1</u> |
| Total                         | 26       |

Election objections, if any, will be due on August 29. No election objections have been filed as of today.

**COMPLAINT REPORT**

No new complaints have issued.

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

**Three (3) hearings are currently scheduled:**

**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

**Hearings Taken Off Calendar due to lack of State budget:**

**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.

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

Hearing, previously scheduled for September 9, 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**

The hearing transcripts are in abeyance pending a state budget and resumption of contract.

**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:**

**Boschma & Sons Dairy, 2008-MMC-2**

The MMC petition was filed August 21, 2008. The matter is pending the filing of an answer to the petition.

**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 was filed August 28, 2008. The Board's reply brief is due October 2, 2008.

**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 September 8, 2008.

**6. Special Projects**

- a. Information Technology Update/Case Tracking System – Case Digest has been consolidated and is now available on our website. Work continues on updating forms on the ALRB website to make them fillable and printable on line as well as compliant with ADA requirements. Training of staff on the new case tracking and timekeeping system is scheduled for completion by the end of September.
- b. Financial Integrity And State Managers Accountability Act (FISMA)—Updating of the personnel manual continues.

**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. On August 11, the bill passed out of committee by a 9-6 vote. On August 18, the bill passed the Senate and was sent back to the Assembly for concurrence in the Senate amendments. On August 19, the bill was referred the Assembly Committee on Labor & Employment. On August 21, the committee recommended concurrence in the Senate amendments. However, on August 22, the prior Senate action approving the bill was rescinded and it was sent back to the Senate for further amendments. The August 22 amendments added the authority to ban (for up to 5 years) a representative of a labor organization who engages in specified misconduct regarding a mediated election. On August 27, the Senate passed the bill as amended by a 21-15 vote. On August 29, the Assembly concurred in the Senate amendments and the bill was sent to enrollment.

**AB 2539 (Strickland)—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 2008-09, 2009-10 and 2010-11 fiscal years, except that they may receive a per diem payment of \$100. The bill is essentially identical to AB 309, which died on January 31, 2008, pursuant to Art. IV, Sec. 10(c) of the Constitution (failure to meet deadline for passage by house of origin). On March 10, the bill was amended to eliminate the list of affected boards and commissions and instead provide that the bill would prohibit a member of a state board or commission from receiving any salary if (1) in 2007 or later, the position of the member on the state board or commission received or would receive a salary totaling at least \$100,000 per year, and (2) the members of the state board or commission are required, either by statute or regulation, to meet 2 or less times per month, whichever is greater. This bill would authorize a member of a state board or commission who is prohibited from receiving a salary under these provisions to receive a per diem payment of \$100. On March 11, the bill was re-referred to Com. on B. & P. On April 9, the hearing was canceled at the request of the author. On April 15 the bill failed passage from committee. On August 31, the bill was sent from committee without further action pursuant to Joint Rule 62(a).

**AB 1869 (Anderson) State boards and commissions; reorganization.**

Existing law establishes various boards and commissions in state government. This bill would declare the intent of the Legislature to effect the changes proposed by the California Performance Review (CPR) to eliminate and consolidate various state boards and commissions. The CPR did not include any proposals affecting the ALRB. On April 3, the bill was referred to Com on B. & P, amended, and re-referred to the Com on B. & P. The April 3 amendments added specific language regarding the abolishment and/or consolidation of various boards and commissions, but does not mention the ALRB. On April 7, the bill was re-referred to Com. On B. & P. On

April 15, the bill failed passage in committee. On August 31 the bill was sent from committee without further action pursuant to Joint Rule 62(a).

**8. Personnel**

Student Assistant interviews have been scheduled for next week.

Hearing Officer Announcement – Announcement has issued and is available on the ALRB web site.

Senior Legal Typist - Announcement has issued and is available on ALRB the web site.

**9. Roundtable:**

The Annual Red Mass for the Diocese of Sacramento will be held on October 8 at 5:00 p.m. followed by the Third Annual St. Thomas More Award Bench and Bar Reception and Banquet honoring Deputy District Attorney Rita Spillane.

On October 29, 2008, the Department of General Services will host the 9th Annual State Agency Recognition Awards (SARA). SARA honors State Departments for outstanding achievements in advocating for and contracting with Small Business (SB) and Disabled Veteran Business Enterprises (DVBE). A panel of judges, representing Small and DVBE businesses and the State of California will select winners for their best practices and creativity. Electronic nominations are due by close of business on September 17, 2008.

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

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