

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 10, 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, Accounting Officer Davis & Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for November 5, 2008 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** Member Rivera-Hernandez reviewed the status of the ongoing budget exercises. Accounting Officer Davis provided an updated budget.
- 4. General Counsel Report:** General Counsel Lee reported on discussions held at the Agency meeting. With the addition of two field examiners in the Visalia office, staff have been able to reduce the number of pending charges. Activity has increased in the El Centro area.
- 5. Executive Officer Report:**

ELECTION REPORT:

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

On December 2, 2008 UFCW Local 5 filed an NA at P & M Dairy which is located in Visalia, CA.

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 Board’s issued its decision on the UFW request for review of the Executive Secretary’s partial dismissal of election objections on November 7, 2008. The Board affirmed the Executive Secretary’s order dismissing the election objections. The UFW filed a motion for reconsideration of the Board’s decision. The parties filed their response on December 1, 2008. The General Counsel moved to intervene in the proceeding and filed a response to the motion for reconsideration that was granted by the Board on December 4, 2008. The matter is now pending decision by the Board. Also, the hearing on one objection was held November 11-14, 2008. The matter is now pending receipt of the hearing transcripts and filing of post hearing briefs.

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. On October 28, 2008 the Visalia Regional Director issued a complaint in this matter and the case is pending the scheduling of an evidentiary hearing.

Mayflower/Rio Blanco Dairy, 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 election objections and complaint were consolidated for hearing on October 3, 2008 and the matter is scheduled for hearing January 14, 2009. The parties have reached a settlement on a number of charges and only one charge may be proceeding to hearing. The charges that overlapped with the election objections have now settled so the objections will have to be severed from the present case and screened de novo. The Executive Secretary will be considering whether to dismiss the objection on the grounds of mootness as the election took place nearly a year ago (December 14, 2007) and no apparent relief may be available. The hearing previously scheduled for February 17, 2009 has been canceled and will be rescheduled once the single charge has been severed of the consolidated complaint and the new charges have been consolidated.

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. On November 13, 2008 the Executive Secretary issued his order on election objections setting one objection for hearing and dismissing the rest. The UFW filed its request for review on due November 24, 2008. The Executive Secretary plans to set this matter for hearing for March 3, 2009.

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.

Herb Thyme Farm, 2008-RC-006-VIS

On October 30, 2008 Laborers International Union of North America, Local 1184, filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Herb Thyme Farm. The employer is a grower of various herbs (mint, oregano, cilantro...etc.) with approximately 90 employees. The pre-election conference was held on November 4, 2008. An election was held on November 6, 2008 in Thermal CA and yielded the following results:

Laborers International Union of North America, Local 1184	67
No Union	11
Unresolved Challenged Ballots	<u>16</u>
Total	94

On November 14, 2008 the Employer filed a single election objection concerning the appropriateness of the unit. The Executive Secretary will be issuing his order today setting a single election objection on the appropriateness of the unit for hearing to be heard on February 9, 2009.

COMPLAINT REPORT

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Two hearings are currently scheduled, three more are in the process of being set and one hearing has been canceled and needs to be reset

Mayflower/Rio Blanco Dairy, 07-CE-85-VI
Prehearing scheduled November 18, 2008
Hearing scheduled January 17, 2009

Mushroom Farms, 07-CE-70-EC
Prehearing scheduled February 5, 2009
Hearing scheduled March 10 & 11, 2009

HerbThyme Farms, Inc., 2008-RC-006-VI
Hearing scheduled February 9, 2009

LE Cooke Co., 08-RD-001-VIS
Pending scheduling of hearing (tentative March 3, 2009)

Lassen Dairy, Inc., 07-CE-37-VI
Pending scheduling of hearing

Hess Collection Winery, 99-CE-23-SAL
Hearing to be taken off calendar and reset when appropriate

HEARINGS HELD:

Gallo Vineyards, Inc., 07-RD-1-SAL
Hearing held November 11-14, 2008

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI
Hearing held December 2, 2008.

CASES PENDING ALJ/IHE DECISION:

Gallo Vineyards, Inc., 07-RD-1-SAL
Hearing was held November 11-14, 2008 and the matter is pending receipt of post-hearing briefs

Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI
Prehearing held August 5, 2008
Hearing held December 2, 2008.
Pending receipt of transcripts and post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

Wolf Farming Co. of CA, 06-CE-28-VI
ALJ decision issued December 9, 2008

CASES PENDING EXCEPTIONS OR REPLY:

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

ALJ decision issued December 9, 2008

Exceptions due January 2, 2009

Reply due January 15, 2009

CASES PENDING BOARD DECISION:

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

The UFW filed a motion for reconsideration of the Board's decision on request for review of election objections. The parties' responses were received December 1, 2008.

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

Request for review of Executive Secretary order partially dismissing election objections

CASES SETTLED OR RESOLVED:

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

The Salinas Regional Director withdrew the complaint and closed the case in J. Lohr Vineyards, Inc. on December 1, 2008 as all the terms and conditions of the agreement have been complied with.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Boschma & Sons Dairy, 2008-MMC-2

The MMC petition was filed August 21, 2008. The employer did not file a response to the petition. On September 8, 2008 the Board issued an order directing the parties to mandatory mediation and conciliation. On September 10, 2008 the California State Mediation and Conciliation Service issued a list of arbitrators. On October 7, 2008 the California State Mediation and Conciliation Service was notified that the parties had selected Luella E. Nelson as their mediator/arbitrator. The mediation sessions began on November 11, 2008. The parties have agreed to a collective bargaining agreement and are in the process of signing the agreement. The agreement and the Mediator's report will be forwarded to the Board when finalized.

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 was held October 16, 2008. On November 20, 2008, the court issued a published opinion affirming in part and reversing in part the Board's decision in 33 ALRB No. 6. Both the Board and UFW filed a petition for rehearing on December 4 and 5, respectively. The case is pending decision by the court. A ruling by the court is expected by December 22, 2008.

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 was filed October 2, 2008. The UFW's brief was filed October 3, 2008. The petitioner's reply brief was filed November 12, 2008. The matter is now pending decision by the court or the setting of oral argument.

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 was filed September 9, 2008. The Board's reply brief was filed October 10, 2008. The petitioner's reply brief was filed November 4, 2008. The matter is now pending decision by the court or the setting of oral argument.

6. Special Projects

- a. Information Technology Update/Case Tracking System—Steve Guida is providing training on the new case time management system to the Visalia and Salinas staffs this week. Training will continue in El Centro the week of December 15th. The ULP, elections and complaints portions of the system are up and running. The inventory tracking component is in place. Testing of the case time management system is underway in Headquarters. The focus of the next stage will be on compliance.
- b. Financial Integrity And State Managers Accountability Act (FISMA)—Currently various policies are being drafted. Upon completion of the review, the entire operations manual will be up-to-date.

7. Legislation –Nothing new to report.

8. Personnel

Hearing Officer – The Board has hired a new hearing officer, Mark Soble. Mr. Soble will be starting December 30, 2009.

Senior Legal Typist – We have not received any new applications for the Senior Legal Typist position.

Student Assistants – The Board has hired two students, Heather Stamps and Arturo Macliz. Both students will be starting next Tuesday, December 16.

9. Roundtable:

The 2008 State Employee' Food Drive is underway and will continue until January 9, 2009. This year's drive will also feature a Rice Donation Program.

The public meeting adjourned at 11:45 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.