

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**February 18, 2009**

Time: 10:08 a.m.  
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez  
General Counsel: Michael Lee  
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary Barbosa. ALJ Soble & Analyst Massie  
Others: Curtis Notsinneh, Consultant to Assemblymember Jerry Hill;  
Freddie Sanchez, UFCW Local 101; John Ulrich, UFCW Local 101;  
Tim Hamann, UFCW Local 5

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for February 4, 2009 were approved 3-0.
- 2. Public Comments:** Mr. Ulrich discussed the interest of the Senate and Assembly in the operations of the Agricultural Labor Relations Board. Mr. Ulrich believes union organizing activity will be increasing within the next year.
- 3. Chairman Report:** Chairman Almaraz, Board Member Rivera-Hernandez, and Assistant General Counsel Blanco attended a meeting hosted by State and Consumer Services Agency Secretary Rosaria Marin with other State agencies which advise farm workers of their rights to discuss ways to achieve mutual outreach.
- 4. General Counsel Report:** Seven new charges have been filed in the Visalia region. General Counsel Lee represented the Board at a meeting of the Agribusiness President's Council.
- 5. Executive Officer Report:**

**ELECTION REPORT:**

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

None.

**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 were held in abeyance pending resolution of ULP’s mirroring the election objections. On October 5, 2007 the Regional Director dismissed three of four 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 the three 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 setting one objection for hearing and dismissing the rest. The UFW filed a request for review of the partial dismissal. The Board’s issued its decision on November 7, 2008 affirming the Executive Secretary’s order dismissing the election objections. The UFW filed a motion for reconsideration of the Board’s decision. The General Counsel intervened in the proceeding and filed a response to the motion. On January 7, 2009 the Board denied the UFW’s motion for reconsideration. The hearing on the sole objection was held November 11, 2008. Post-hearing briefs were filed February 2, 2009. The IHE decision is pending.

**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. A hearing on the related ulps is scheduled for March 24, 25 and 26, 2009.

**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
UCB's	<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
UCB's	<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 November 24, 2008. On January 21, 2009 the Board issued its decision affirming the Executive Secretary's partial dismissal of objections. An investigative hearing previously scheduled for March 3, 2009 has now been continued to March 17, 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 June 25, 2008, the UFW filed objections to the election. 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 January 16, 2009, the Regional Director issued a partial dismissal on one charge and a full dismissal of the remaining five (5) charges. The UFW's request for review was received February 9, 2009. The matter is pending review of dismissal by the General Counsel.

**HerbThyme 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 investigative hearing was held February 9, 2009. The matter is pending receipt of transcripts.

**Frank Pinheiro Dairy & Milanesio Farms, 2009-RC-001-VIS**

On January 23, 2009 UFCW International Union, Local 5 filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Frank Pinheiro Dairy & Milanesio Farms. The employer is a dairy located in Strathmore CA with 24 employees. An election was held January 30, 2009 with the following results:

UFCW Local 5	12
No Union	9
Unresolved Challenged Ballots	<u>2</u>
Total	23

As the number of unresolved challenged ballots was insufficient to affect the outcome of the election, no challenged ballot investigation was necessary. As neither party timely filed election objections, a certification of representative issued February 13, 2009. This matter is now fully resolved and will be removed from this report.

**Artesia Dairy, 06-RC-1-VI**

On January, 25, 2008, the Employer filed a petition for writ of review with the 5th District Court of Appeal requesting that the court set aside the certification of election in Artesia Dairy. On November 20, 2008, the Fifth District Court of Appeal issued its decision in Artesia Dairy v. ALRB (Court of Appeal Case No. F054590). The court affirmed in part and reversed in part the Board's decision in Artesia Dairy, Case No. 33 ALRB No. 6. The Board had determined that three individuals who were the nephews and foster children of the owners of the dairy were the functional equivalent of the owners' children during the time in question and thus were ineligible to vote in a representation election under Board regulation section 20352. The Court reversed the Board's determination as to the owner's three nephews, finding that they were eligible voters because they did not fall within the plainly defined ineligible category of children of the employer set forth in section 20352(b)(5) of the Board's regulations. Therefore, the Court ordered that the ballots of the three nephews be opened and counted. The Court upheld the Board's determinations regarding four other individuals who were found to be ineligible to vote in the representation election.

On December 3, 2008, the Board filed a petition for rehearing with the 5th District Court of Appeal requesting that the Court affirm the Board's conclusion that the nephews/foster children were ineligible to vote. On December 16, 2008, the Court issued an order denying the Board's petition for rehearing. On January 20, 2009 the Court issued a remittitur returning jurisdiction over the matter to the Board

On January 27, 2009 the Board issued Administrative Order 2009-2 ordering that pursuant to the 5<sup>th</sup> District Court of Appeal's decision in Artesia Dairy v. Agricultural Labor Relations Board (2008) 168 Cal.App.4<sup>th</sup> 598, the ballots of Kevin John Avila II, Kasey John Avila, and Kannen John Avila be opened and counted. On February 4, 2009, the Regional Director opened the three unresolved ballots and issued a revised and final tally with the following results:

UFW	27
No Union	28
Unresolved Challenged Ballots	<u>0</u>
Total	55

As the no union choice received a majority of the valid ballots cast and neither party timely filed objections to the election, the Executive Secretary issued a certification of results of election on February 9, 2009. This matter is now fully resolved and will be removed from this report.

## **COMPLAINT REPORT**

### **NEW COMPLAINTS ISSUED**

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

On February 10, 2009 the Salinas Regional Director withdrew the consolidated complaint and charges in the above-referenced case as the Respondent and Charging Party (UFCW Local 5) signed an agreement to resolve all outstanding issues and, as part of that agreement, agreed to withdraw the matters in this complaint.

#### **D'Arrigo Bros. Co. of California, 07-CE-12-SAL**

On February 10, 2009 the Regional Director for the Salinas Regional Office issued a consolidated complaint against D'Arrigo Bros. Co. of California because the employer allegedly suspended and terminated an agricultural employee because of his activities on behalf of his certified bargaining representative (i.e., employee chosen to participate as employee representative of the union in mandatory mediation negotiations and was later suspended and discharged).

#### **Frog's Leap Winery, 07-CE-28-SAL**

On February 11, 2009 the Regional Director for the Salinas Regional Office issued a consolidated complaint against Frog's Leap Winery because the employer had allegedly refused to rehire two employees because they had engaged in protected concerted activity.

#### **San Martin Mushrooms, 07-CE-67-SAL**

On February 13, 2009 the Regional Director for the Salinas Regional Office issued a consolidated complaint against San Martin Mushrooms because the employer had allegedly interrogated, ridiculed, harassed, embarrassed, threatened legal actions,

threatened termination and terminated an agricultural employee because he filed charges against the employer.

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

**Four hearings are currently scheduled**

**LE Cooke Co., 08-RD-001-VIS**  
Hearing scheduled March 17, 2009

**Mushroom Farms, 07-CE-60-EC**  
Prehearing February 5, 2009  
Hearing March 10 & 11, 2009

**Lassen Dairy dba Meritage Dairy, 07-CE-37-VI**  
Prehearing March 3, 2009  
Hearing March 24, 25 and 26, 2009

**Mushroom Farms, 07-CE-34-SAL**  
Prehearing March 26, 2009  
Hearing April 14, 2009

**HEARINGS HELD:**

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

**CASES PENDING ALJ/IHE DECISION:**

**Tule River and P&M Vanderpoel Dairy, 05-CE-49-VI**  
Hearing was held December 2 & 3, 2008. Post-hearing briefs were filed January 23, 2009. The matter is pending decision by the administrative law judge.

**Gallo Vineyards, Inc., 07-RD-1-SAL**  
Hearing was held November 11-14, 2008. The post-hearing briefs were filed February 2, 2009. The matter is pending decision by the investigative hearing examiner.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASES PENDING EXCEPTIONS OR REPLY:**

None.

**CASES PENDING BOARD DECISION OR ACTION:**

**Woolf Farming Co. of CA, 06-CE-28-VI**

Exceptions filed January 2, 2009

Reply received January 15, 2009

**Hess Collection Winery, Case No. 2003-MMC-01 (29 ALRB No. 6)**

General Counsel's Request for Advice on Jurisdiction

Briefs on novel issue due March 2, 2009; Reply briefs due March 12, 2009.

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

None.

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

None.

**COURT LITIGATION**

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

**DeHaan v. ALRB, G578041 (Claim to the California Victim Compensation Board)**  
The California Victim Compensation Board denied the DeHaan claim on January 21, 2009.

## **6. Special Projects**

- a. Information Technology Update/Case Tracking System—General Counsel Lee and Member Shiroma represented the ALRB at Labor Agency Capital Planning meeting. The next meeting with Consultant Steven Guida is set for February 27 at 10:00 a.m.
- 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 is facilitating creation of manuals and policies for personnel, accounting and business services. First section of the personnel manual has been sent to our Personnel Officer for review.
- c. FI\$Cal (Financial Information System for California)—Nothing new to report.

**7. Legislation:** None

**8. Personnel:** Nothing new to report.

**9. Roundtable:**

The California Farm Bureau Federation will be hosting its annual Legislative Reception on February 24, 2009, from 6:00 p.m. – 8:00 p.m. at the Sheraton Grand Hotel, 1230 J Street, Sacramento.

The Labor Arbitration Institute will be hosting a Labor Law and Labor Arbitration Conference on June 22-23, 2009, at the Las Vegas Convention Center, 3150 Paradise Road, Las Vegas, Nevada.

The public meeting adjourned at 11:10 a.m.

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