

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

April 1, 2009

Time: 10:00 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; Analyst Massie; ALJ Soble; Administrative Assistant Sakauye; Assistant General Counsel Blanco

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for March 24, 2009 were approved 3-0 with minor changes.
- 2. Public Comments:** None.
- 3. Chairman Report:** The next monthly Labor and Workforce Development Agency meeting is scheduled for April 7, 2009. Chairman Almaraz, Executive Secretary Barbosa and Student Assistant Salazar attended the luncheon co-sponsored by the Women Lawyers of Sacramento and La Raza Lawyers of Sacramento in honor of the late Cesar Chavez.
- 4. General Counsel Report:** Four 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):

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 issued March 4, 2009. On March 16, 2009 the Executive Secretary granted the Employer’s request for an extension of time to file exceptions to the Investigative Hearing Examiner’s decision. Exceptions are now due April 20, 2009. Replies are due May 1, 2009.

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 ULP's was held March 24 and 25, 2009. The matter is pending receipt of the transcripts and filing of post-hearing briefs.

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. On March 17, 2009, the General Counsel issued his ruling on request for review and affirmed the dismissal of all charges. On March 25, 2008 the Regional Director issued his order lifting the impoundment of ballots and order directing the opening and counting of ballots on April 8, 2009.

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. On March 17, 2009 the IHE issued his decision overruling the Employer’s objection on the appropriateness of the unit and recommending that the results of the election be certified and that a certification of representative issue. Exceptions are due March 30, 2009. Reply briefs are due April 9, 2009.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

No new complaints have issued.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

One hearing is scheduled:

Mushroom Farms, 07-CE-34-SAL

Prehearing March 26, 2009

Hearing April 14, 2009

HEARINGS HELD:

Lassen Dairy dba Meritage Dairy, 07-CE-37-VI

Hearing began on March 24 and 25

CASES PENDING ALJ/IHE DECISION:

Mushroom Farms, 07-CE-60-EC

Hearing held March 10 & 11, 2009

Post-hearing briefs are due April 20, 2009

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

HerbThyme Farms, Inc., 2008-RC-006-VIS

Decision issued March 17, 2009

Exceptions are due March 30, 2009

Replies are due April 9, 2009

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

Decision issued March 16, 2009

Exceptions are due April 9, 2009

Replies are due April 23, 2009

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

Decision issued March 4, 2009

Exceptions are due April 20, 2009

Replies are due May 1, 2009

CASES PENDING BOARD DECISION OR ACTION:

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

Opening briefs on novel issue were filed by Employer and Petitioner on March 11 and 12, 2009 respectively. The General Counsel filed a reply brief on March 23, 2009. The matter is now pending before the board for decision.

CASES SETTLED OR RESOLVED:

Northstar Dairy, 07-CE-38-VI

The complaint was withdrawn and the case dismissed as the parties reached an informal bilateral settlement agreement and full compliance has been obtained.

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.

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

Petition for writ of review is due April 9, 2009

6. Special Projects

- a. Information Technology Update/Case Tracking System—Steve Guida will install updates and the Trust Fund Module of the Case Tracking system this week. He will also meet with the agency's business services officer.
- b. Financial Integrity and State Managers Accountability Act (FISMA) — Member Rivera provided a review of the policies distributed for review last week and discussed how to proceed with the review and approval process.
- c. Public Information Requests—The public information requests of Bob Franzonia of the Senate Appropriations Committee and Frances Low of the Senate Office of Research were discussed.

7. Legislation:

SB 789 (Steinberg)—Labor Representatives: Elections

This bill is identical to SB 180, which passed the Legislature in 2007 but was vetoed by the Governor. The bill would amend the Agricultural Labor Relations Act (Labor Code sec. 1140, et seq.) to 1) provide for a card check system in which, in lieu of a secret ballot election, agricultural employees may choose an exclusive bargaining representative by submitting to the ALRB authorization cards signed by a majority of the employees in the bargaining unit; 2) create penalties for willful or repeated commission of specified unfair labor practices; and 3) expand the categories of unfair labor practice allegations that require the ALRB, upon determination that a complaint should issue, to petition the Superior Court for preliminary injunctive relief. The bill was assigned to the Labor and Industrial Relations Committee on March 19 and was set for hearing on April 22.

On March 26 the hearing was canceled and on March 27 the bill was set for hearing on April 1.

AB 783 (Anderson)—State Government: agencies, commissions, boards: repeal.

This bill would require that all statutorily created state agencies, boards, and state commissions that are funded by General Fund revenues, except for the Franchise Tax Board, be repealed on January 1, 2022, unless a later enacted statute, that is enacted before January 1, 2022, deleted or extends that date. The bill was referred to the Committee on Business and Professions on March 23.

AB 579 (Huber)—State Boards and Commissions; Annual Salaries

This bill would delete the existing salary provisions pertaining to specified boards and commissions, including the ALRB, and substitute a salary setting mechanism based on an audit by the State Auditor. Specifically, the bill would require the State Auditor, beginning January 1 of each even-numbered year, to audit the workload of each state board and commission and to make a finding regarding the workload of that state board or commission and the number of hours necessary for each board member or commissioner to work to fulfill his or her duties. The State Auditor would be required to complete these audits by September 1 of each even-numbered year. The bill would also require the Governor, by January 1 of each even-numbered year, to establish by executive order the annual salaries of all board members and commissioners based on the workload audits and associated findings of the state auditor. The bill would prohibit an affected board member or commissioner from being compensated for his or her service in the next year, beyond payment of per diem and reimbursement of travel and attendance costs made according to law, if the State Auditor fails to conduct the audit or if the Governor fails to establish by executive order their annual salaries. The bill was referred to the Committee on Business and Professions on March 31.

- 8. Regulations:** The Board voted 3-0 to begin the formal rulemaking process to amend Regulation 20352, subdivision (b)(5), to clarify the familial voter eligibility exclusions by adding express definitions. The target date for publication in the Notice Register is May 8, 2009, and the last day of the comment period will be June 24, 2009. The proposed language will be as follows:

§ 20352. Eligibility

(b) The following are ineligible to vote:

(5) The parent, child, or spouse of the employer or of a substantial stockholder in a closely held corporation which is the employer.

"Parent" means a biological, foster, or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the

employee when the employee was a minor. "Child" means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis where the child is either under 18 years of age or an adult dependent child. "Spouse" includes a registered domestic partner within the meaning of Family Code sections 297-299.6.

9. Personnel: The Board welcomed Ryan Reese to his position as Business Services Officer.

10. Roundtable:

The Instituto Laboral de la Raza 2009 Labor Awards Dinner will be held on Friday, April 10, 2009, at the Hilton Hotel, 333 O'Farrell Street, San Francisco.

The California Women for Agricultural will be holding their Legislative Reception at Spataro's Restaurant, 1415 L Street, Sacramento, on May 5, 2009.

The public meeting recessed at 12:15 p.m., reconvened at 2:00 p.m. and concluded at 4:00 p.m.