

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**May 6, 2009**

Time: 1:50 p.m.  
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez  
Staff Present: Board Counsel Wender, Heyck and Robinson; Executive Secretary  
Barbosa (telephone conference), Business Services Officer Reese &  
Analyst Massie  
Absent: General Counsel Lee, ALJ Soble

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for April 1, 2009 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** Business Services Officer Reese discussed security and end-of-useful-life issues surrounding all of the agency's copiers. Mr. Reese reviewed various replacement options. The Board voted 3-0 to authorize a budget of up to \$120,000 towards the replacement of several existing copiers that are reaching the end of their useful life and are unable to protect legal and confidential information that pass through them in order to improve data security. Chairman Almaraz presented a request from the Department of Industrial Relations for assistance with the printing costs of Heat Illness brochures. The Board voted 3-0 to allocate \$30,000 towards printing costs with the understanding that a supply of brochures will be available for ALRB regional offices to distribute. Chairman Almaraz attended the annual California Women for Agriculture reception on behalf of the Board on May 5. The ALRB received an award from the California State Employees Charitable Campaign for the highest per capita contributions. The agency received notice of the bilingual services language survey. The Board agreed to the commencement of quarterly administrative staff meetings.
- 4. General Counsel Report:** None.
- 5. Executive Officer Report:**

**ELECTION REPORT:**

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

No NA's or NO's have been filed during the reporting period.

**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. On April 20, 2009, the Decertification Petitioner filed exceptions to the IHE's decision. No exceptions were filed by the employer. The reply to exceptions was due May 1, 2009. No reply has been received.

**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. Post-hearing briefs are due May 8, 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. On March 17, 2009 the General Counsel issued his ruling on request for review and affirmed the dismissal of all charges. On March 25, 2009 the Regional Director issued his order lifting the impoundment of ballots and order directing the opening and counting of ballots on April 8, 2009. On April 8, 2009 the Regional Director opened and counted the impounded ballots and issued the following tally:

UFW	18
No Union	39
Unresolved Challenged Ballots	<u>3</u>
Total	60

On April 17, 2009 the Executive Secretary issued his order dismissing all of the UFW's objections to the election. The Union did not seek review of this ruling and a certification of results of election issued on April 29, 2009. This matter is now fully resolved and will be removed from this report.

**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 were due March 30, 2009. As no exceptions were filed, the Executive Secretary issued an order making the investigative hearing examiner's decision final and issued a certification of representative.

**Henry Hibino Farms, 2009-RD-001-SAL**

On April 7, 2009 agricultural employee Jose Lopez filed a decertification petition with the Salinas Regional Office seeking the ouster of the incumbent bargaining representative UFW at Henry Hibino Farms (HHF). The employer is a grower of mixed vegetables including lettuce, broccoli, cauliflower, celery and onions. HHF is located in Salinas and has approximately 15 employees. An election was held April 14, 2009 with the following results:

UFW	6
No Union	9
Unresolved Challenged Ballots	<u>0</u>
Total	15

On April 21, 2009 the UFW filed objections to the election. The objections are before the Executive Secretary for screening.

**COMPLAINT REPORT**

**NEW COMPLAINTS ISSUED**

No new complaints have issued.

**San Martin Mushrooms, 07-CE-76-SAL**

The Regional Director issued an order consolidating the complaint and backpay specification on April 23, 2009.

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

**One hearing is scheduled:**

**HerbThyme Farms, Inc., 2008-CE-074-VIS**

1<sup>st</sup> Prehearing May 12, 2009

2<sup>nd</sup> Prehearing May 27, 2009

Hearing June 24, 2009

**No hearings in progress.**

**HEARINGS HELD:**

**Mushroom Farms, 07-CE-34-SAL**

Hearing April 14 and 15, 2009

**CASES PENDING ALJ/IHE DECISION:**

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

Hearing held March 24 and 25.

Post-hearing briefs are due May 8, 2009

**Mushroom Farms, 07-CE-60-EC**

Hearing held March 10 & 11, 2009

Post-hearing briefs are due May 11, 2009

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASES PENDING EXCEPTIONS OR REPLY:**

**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, Case No. 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.

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

Decision issued March 16, 2009

Exceptions filed April 9, 2009

General Counsel filed a reply brief on 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 SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

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

Opening briefs on novel issue were file 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.

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

Decision issued March 16, 2009

Exceptions filed 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

**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 (35 ALRB No. 2)

Petition for writ of review was due April 9, 2009. No petition was filed. This matter is now fully resolved and will be removed from this report.

**6. Special Projects**

- a. Information Technology Update/Case Tracking System: A pre-meeting and regular meeting were held on the compliance and the trust fund portion of the case tracking system. There will be a protocol developed for compliance including providing a monthly update. The next meeting is scheduled for May 29<sup>th</sup>. Member Rivera-Hernandez and Administrative

Assistant Sakauye attended the LWDA meeting on the development of an agency-wide case management system. It was decided by LWDA that in view of the ALRB's already existing case management system, the ALRB will not be required to participate in the project at this time.

- b. Financial Integrity and State Managers Accountability Act (FISMA)—The Board discussed potential new personnel policies and decided to meet with General Counsel Lee and Personnel Manager Kojima on establishing a protocol for prioritizing policy review, revision, addition, and approval.
- c. Purchasing Authority Deficiencies Update – On April 16, 2009 DGS informed us that our Purchasing Authority had been approved. The term of the approval is from May 1, 2009 through April 30, 2010. DGS also provided a list of four (4) deficiencies that needed to be addressed by July 1, 2009. The purchasing authority was placed on the agenda because one of the deficiencies indicated the Board needed to submit policies and procedures that address purchasing authority for non-IT and IT goods and services. Clarification was provided that no new policy or policies are required. This is a report that is done annually and the existing policies and procedures were inadvertently not submitted with the report. Business Services Officer Reese and AGPA Winston are working to address all deficiencies by the due date indicated.

## 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 April 14, 2009 amendments deleted the requirement that the cards be signed under penalty of perjury and deleted the witness statement, also which was to be signed under penalty of perjury. The language deleted, from section 1156.35, subdivision (c)(3), is as follows:

~~(F) The following statement, to be signed by the employee signing the representation card: "I declare under penalty of perjury under the laws of California that I am employed by the agricultural employer that is named in this representation card."~~

~~—(G) The following statement, to be signed by the person who witnesses the employee signing the representation card: "I declare under penalty of perjury under the laws of California that I witnessed the signing of this representation card and that, to the best of my knowledge, information, and belief, the employee who signed this representation card was not intimidated, threatened, or coerced in any way and was not paid any money or other thing of value in exchange for signing this representation card."~~

The bill was re-referred to the Committee on Appropriations. The bill passed from committee on April 21, passed the Senate on April 23 and sent to the Assembly where it was sent to the Committee on Labor and Employment on April 30. A hearing was set for May 6.

**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. This bill was referred to the Committee on Business and Professions on March 31. On April 22, the bill passed from committee and was referred to the Committee on Appropriations. A hearing was set for May 6.

**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, deletes or extends that date. The bill was referred to the Committee on Business and Professions on March 23.

**AB 1501 (V. Manuel Perez). Boards and commissions: salaries full time.**

This bill would require the salary of a board member, as defined, that is set by statute to be based on the board member serving full time and would require, if a board member does not work full time in any given month, to prorate the salary of that board member to the actual hours worked while serving as a board member. The bill would exclude from these requirements a board member who is paid a salary on or after January 1, 2010, of less than \$100,000. The bill would require the Department of Personnel Administration to adopt regulations for determining which activities constitute service as a board member and the minimum number of hours required to deem a board member to be serving full time, which would be prohibited from being less than 160 hours per month. On April 2 the bill was referred to the Committee on Business and Professions. On April 21 a hearing was set but canceled at the request of the author. The bill passed from committee on April 29 and was re-referred to the Committee on Appropriations.

**SB 685 (Strickland). State boards and commissions: salaries: suspension.**

This bill would prohibit members appointed to specified state boards and commissions from receiving a salary for the 2010-11, 2011-12, and 2012-13 fiscal years. 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 specified per diem payment during those fiscal years. On March 19, this bill was referred to the Committee on Governmental Organization. On March 27, the bill was set for hearing April 28. On April 13 the bill was amended and re-referred to the Committee on Governmental Organization. The bill failed passage in committee on April 28. Reconsideration was granted.

8. **Regulations** – Proposal to Clarify Familial Voter Eligibility Exclusions—The Board discussed the eligibility language to include in the proposed regulation for public comment.
9. **Personnel** – The announcement for a Student Assistant has been forwarded to the Foundation for posting. The position is also advertised on our website and posted outside our offices. Professor Phil Martin has also been contacted to find out if there are any interested students.

**10. Roundtable –**

The Association of Labor Relations Agencies' 59<sup>th</sup> Annual Conference will be held July 18-22 at the Oakland Marriott City Center in Oakland, California. 2009 ALRAcademy will be held July 17-19, 2009, at the Oakland Marriott Center City, immediately before the ALRA Annual Conference. The 2009 Advocates' Day Conference takes place on Monday, July 20, from 8:00 a.m. to 7:30 p.m.

The public meeting adjourned at 4:15 p.m.

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