

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 17, 2009

Time: 10:05 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: ALJ Soble, Board Counsel Wender, Heyck and Robinson; Executive Secretary Barbosa & Analyst Massie
Others: Rodney Wilson, Consultant to Assembly Speaker Karen Bass

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for June 3, 2009 were approved 3-0 with minor changes.
- 2. Public Comments:** None.
- 3. Chairman Report:** Chairman Almaraz will be appearing before the Senate Labor and Industrial Relations Committee on June 18 to address the issue of consolidation. Mr. Almaraz attended the prehearing conference for departments being considered for consolidation yesterday at Labor and Workforce Development Agency. Business Services Officer Reese is working on contract exemptions in light of Executive Order S-09-09 and Budget Letter 09-16 regarding State Contract Expenditure Reductions. Chairman Almaraz is recommending that a session for ALRB constituents on how to present a case before the Agricultural Labor Relations Board be included at the 2010 Center for Collaborative Solutions Labor Management Conference.
- 4. General Counsel Report:** General Counsel Lee met with the El Centro Subregional Office staff this week.
- 5. Executive Officer Report:**

ELECTION REPORT:

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

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 received May 1, 2009. The matter is pending before the Board for decision.

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 were received May 8, 2009. On June 1, 2009 the ALJ issued his decision in this matter. Exceptions are due June 24, 2009. Reply briefs are due July 7, 2009.

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 Executive Secretary issued his order setting the objections for hearing on May 8, 2009. An investigative hearing on the two objections is scheduled for June 23, 2009.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

Two hearings are scheduled and one hearing is being requested:

Henry Hibino Farms, 2009-RD-001-SAL
Hearing June 23, 2009 (next Tuesday)

HerbThyme Farms, Inc., 2008-CE-074-VIS
1st Prehearing held May 12, 2009
2nd Prehearing held May 27, 2009
Hearing June 24, 2009 (next Wednesday)

Frog's Leap Winery, 07-CE-28-SAL
Requested dates under consideration:
Prehearing July 28, 2009
Hearing August 25, 2009

No hearings in progress.

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

Mushroom Farms, 07-CE-34-SAL
Hearing held April 14, 15, 16, 17 and 21
Post-hearing briefs due July 15, 2009

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

Mushroom Farms, 07-CE-60-EC

Exceptions due June 22, 2009

Reply briefs due July 6, 2009

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

Exceptions due June 24, 2009

Reply briefs due July 7, 2009

CASES PENDING BOARD DECISION OR ACTION:

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 filed April 20, 2009

Replies received May 1, 2009

San Joaquin Tomato Growers, Inc., 93-CE-38-VI (20 ALRB No. 13)

Regional Director's Motion to Close Case without Full Compliance

Responses due June 15, 2009. None received to date. Replies are due June 29, 2009

Ace Tomato Company, Inc., 93-CE-37-VI (20 ALRB No. 7)

Regional Director's Motion to Close Case without Full Compliance

Responses due June 19, 2009. Replies are due July 2, 2009

CASES SETTLED OR RESOLVED:

Vignolo Farms, Inc., 07-CE-95-VI

Parties reached a bilateral settlement agreement resolving the claims in ULP charge 07-CE-95-VI. In consideration of a lump sum payment, the charging parties waived reinstatement.

United Farm Workers, 04-CL-1-VI (OX)

The Regional Director issued a closing letter on June 12, 2009 as the respondent had satisfactorily met all the terms and conditions of the Board order. As part of this case, 47 employees received backpay in the sum of \$510.45 and dues reimbursement in the

amount of \$14,759.05 as well as standard notice remedies (reading, mailing and posting).

COMPLIANCE CASES CLOSED:

Cieniga Farms, Inc., 00-CE-334-EC(SM)

Order Granting Motion to Make Case Eligible for Pay Out from AERF issued June 5, 2009.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

Cieniga Farms, Inc., 00-CE-334-EC(SM)

Order Granting Motion to Make Case Eligible for Pay Out from AERF issued June 5, 2009. Admin. Order 2009-07.

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.

Bryan DeHaan and Jacob DeHaan v. California Agricultural Labor Relations Board, et al., 2009-NC-09-232146

On March 27, 2009 *Bryan DeHaan and Jacob DeHaan* filed a complaint in the Superior Court of Tulare County, Visalia Division, Case No. 09-232146 (VCGCB Claim No. G578040). against the *Agricultural Labor Relations Board, et al* alleging that that ALRB agents falsely imprisoned the DeHaans, two minors, in the process of taking their challenged ballot declarations at a representation election conducted by the ALRB on April 23, 2008 at Heritage Dairy in Tulare, CA. The answer to the complaint is due June 22, 2009.

6. Special Projects

- a. Information Technology Update/Case Tracking System—Work continues on development of the trust fund application. Business Services Officer Reese will provide input into possible revisions to the inventory database. The next committee meeting is scheduled for 1:00 p.m. on June 24.
- b. Financial Integrity and State Managers Accountability Act (FISMA)—The General Counsel was provided draft updated policies on Personnel Management, Procedures and Services; Classification and Civil Service Lists and Examinations, Equal Employment Opportunity and State Disability; and Communication for his review and approval.
- c. Discussion of Pros and Cons of Using Video Conferencing and/or Digital Recording Equipment for ALRB Hearings—The Board considered a memo reviewing the pros and cons of using video conferencing and/or digital recording equipment to reduce costs. ALRB staff believe the use of video conferencing in hearings would make it harder for Administrative Law Judges to make witness credibility determinations and that significant savings is only achieved if no transcript is produced. The Board noted that its decisions are routinely appealed requiring production of a transcript thus there is limited savings potential available from switching from court reporters to digital recording devices. The Board voted 3-0 to accept staff's recommendations to maintain the status quo at this juncture, and to continue to explore new technology options that might be used to effect cost savings in the future.

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. On May 7, the bill passed from committee and was re-referred to the Committee on Appropriations.

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.

As amended on May 29, this bill would require the State Auditor to annually, upon appropriation by the Legislature, audit the workload of at least two state boards or commissions comprised of board members or commissioners to whom the state pays an annual salary for their service on those state boards and commissions. The State Auditor would be required to make findings for each state board or commission audited 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 to that state board or commission. The State Auditor would be required to complete these audits and make these findings by June 1 of each year. The State Auditor would also be required to annually report to the Legislature and the Governor

regarding these audits and findings. The State Auditor would be required to audit the workload of the California Integrated Waste Management Board and the California Unemployment Insurance Appeals Board in accordance with, and in satisfaction of, the above provisions, by June 1, 2010. On June 2, 2009, the bill passed on to the Senate. On June 3, the bill was assigned to the Senate Rules Committee.

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. On May 28 the bill was held under submission.

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** –The Board voted 3-0 to provide the regional directors with additional time to provide their perspective on the need to clarify the discovery regulations regarding statements of named complainants and exculpatory evidence. The issue will be taken up at the next Board meeting
9. **Personnel** – Nothing new to report.

10. Roundtable –

The United Way Toilet Paper Drive is underway today. Toilet paper can be dropped off at Cal Expo main entrance (1600 Exposition Blvd. in Sacramento), Golden 1 Credit Union headquarters (8945 Cal Center Drive off Hwy 50 and Watt Avenue), and Folsom High School (1655 Iron Point Road, Folsom).

The public meeting adjourned at 11:05 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.