

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 16, 2009

Time: 11:00 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee (by conference call)
Staff Present: Executive Secretary Barbosa, ALJ Soble, Board Counsel Heyck,
Wender and Robinson; Analyst Massie

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for September 2, 2009 were approved 3-0 with minor changes.
- 2. Public Comments:** None
- 3. Chairman Report:** The Call for Presentations for the 21st Annual CSS Labor-Management Conference to be held from March 24-26, 2010 in Anaheim, California, is due September 25, 2009. The ALRB requested input from its stakeholders on any suggestions for presentation at the conference but received no responses. The Annual Report is on target for release next week. The ALRB eliminated a clerical position and one half-time Administrative Law Judge position pursuant to a Finance budget directive.
- 4. General Counsel Report:** The charges continue to come in at a slower rate than last year. Training for field examiners and attorneys in the regional offices will commence next month.
- 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. 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. Both the employer and charging party filed exceptions to the ALJ decision on June 24, 2009. Reply to exceptions briefs were filed July 7, 2009. The matter is pending before the Board for decision.

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 was held June 23 and 24, 2009. The IHE's decision issued September 14, 2009. Exceptions are due September 28, 2009. Reply briefs are due October 9, 2009.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

One hearing is scheduled:

D'Arrigo Bros. of CA, 2007-CE-12-SAL
 Prehearing September 10, 2009 (1:30 PM)
 Hearing October 20-23 and 27-30, 2009

No hearings in progress.

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

HerbThyme Farms, Inc., 2008-CE-074-VIS
 The parties' post-hearing briefs were received August 31, 2009. The matter is pending the ALJ's decision.

ALJ/IHE DECISIONS ISSUED:

Mushroom Farms, 07-CE-34-SAL
 Decision issued September 3, 2009
 Exceptions due October 1, 2009
 Reply briefs due October 14, 2009

Henry Hibino Farms, 2009-RD-001-SAL
Decision issued September 14, 2009
Exceptions due September 28, 2009
Reply briefs due October 9, 2009

CASES PENDING EXCEPTIONS OR REPLY:

Henry Hibino Farms, 2009-RD-001-SAL
Decision issued September 14, 2009
Exceptions due September 28, 2009
Reply briefs due October 9, 2009

Mushroom Farms, 07-CE-34-SAL
Decision issued September 3, 2009
Exceptions due October 1, 2009
Reply briefs due October 14, 2009

CASES PENDING BOARD DECISION OR ACTION:

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
Response received June 19, 2009. A reply from the Respondent was received July 8, 2009.

Ace Tomato Company, Inc., 93-CE-37-VI (20 ALRB No. 7)
Regional Director's Motion to Close Case without Full Compliance
Response received June 19, 2009. A reply from the Respondent was received July 8, 2009.

Lassen Dairy, Inc. dba Meritage Dairy, 07-CE-37-VI
Exceptions filed June 24, 2009
Reply briefs filed July 14, 2009

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02
Request for mandatory mediation and conciliation was received on September 10, 2009. On September 11, 2009 the petitioner filed a supplemental memorandum and declaration in support. On September 15, 2009 the Executive Secretary granted the Employer's request for an extension of time to file an answer to the petition. The answer to the petition is now due September 23, 2009.

United Farm Workers, Case No. 06-CL-8-SAL et al.
Formal Settlement Agreement

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02
Request for mandatory mediation and conciliation was received on September 10, 2009. On September 11, 2009 the petitioner filed a supplemental memorandum and declaration in support. On September 15, 2009 the Executive Secretary granted the Employer's request for an extension of time to file an answer to the petition. The answer to the petition is now due September 23, 2009.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02
Request for mandatory mediation and conciliation was received on September 10, 2009. On September 11, 2009 the petitioner filed a supplemental memorandum and declaration in support. On September 15, 2009 the Executive Secretary granted the Employer's request for an extension of time to file an answer to the petition. The answer to the petition is now due September 23, 2009.

DELEGATION OF AUTHORITY REGARDING PROCEDURAL MOTIONS IN MANDATORY MEDIATION AND CONCILIATION CASES:

As a result of the issues arising in *Frank Pinheiro Dairy*, Case No. 2009-MMC-02 regarding a request for an extension of time, the Board voted 3-0 to delegate to the Executive Secretary the express authority to rule on procedural motions in mandatory mediation and conciliation cases to parallel his existing authority regarding such motions in unfair labor practice and election cases.

COURT LITIGATION

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 was filed June 22, 2009. The deposition of an ALRB staff member and DeHann children were taken on September 1, 2009. The trial is scheduled for April 15, 2010.

6. Special Projects

- a. Information Technology Update/Case Tracking System—Work continues on the trust fund application. Analyst Massie will attend the Agency IT Consolidation Meeting regarding Service Desks and Telecommunications on September 17. Reports on Administrative Orders and Mandatory Mediation and Conciliation will begin issuing next month.
- b. Financial Integrity and State Managers Accountability Act (FISMA)-Update on creation of ALRB policy manuals for accounting, personnel and business services. The policy committee met and made extensive changes to current policies.

7. Legislation – Legislative Proposals 2010; Update on SB 685, SB 789, AB 579 AB 783, AB 1501, and any other pending legislation affecting the ALRB.

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. On August 27 the bill was read a third time, passed the Assembly and sent to the Senate where it was sent to enrollment. The bill was sent to the Governor on August 28. On September 2, the Governor vetoed the bill.

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 sent to the Rules committee and on June 18, the bill was referred to the Committee on Governmental Organization. On June 30 the bill was read a second time, amended, and re-referred to the Committee on Governmental Organization. On July 8 the bill passed from committee and was re-referred to Committee on Appropriations. On August 17, the bill passed from committee, was read a second time, amended, and re-referred to the Committee on Appropriations. On August 31, the bill passed from committee, amended, and passed as amended. On September 1, the bill was read a second time and amended. The bill was ordered to a Special Consent Calendar on September 2, read a third time on September 4, passed and was sent to the Assembly. On September 11, the Senate amendments were concurred in and the bill was sent to enrollment.

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.

Proposed Legislation

General Counsel Lee recommended we do not submit any proposed legislation to the Labor and Workforce Development Agency and the Board concurred.

8. **Regulations** – Status update on initiation of formal rulemaking process re: proposal to clarify familial voter eligibility exclusions and proposal to clarify discovery regulations regarding exculpatory evidence. The Notice of Proposed Regulatory Action to Amend Title 8, Sections 20236 and 20352 was published on September 11, 2009.
9. **Personnel** – Student Assistant Arturo Salazar has accepted a position with the El Dorado County Community Health Center as a patient advocate in Placerville.
10. **Roundtable** –
ALJ Soble proposed several ideas regarding possible ways to raise funds for the California State Employees Charitable Campaign.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.