

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 4, 2009

Time: 10:10 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: Executive Secretary Barbosa, ALJ Soble, Board Counsel Heyck,
Wender and Robinson; Analyst Massie and Student Assistant
Ichikawa
Others: Freddie Sanchez, UFCW Local 101; Sharokina Shams, KCRA TV

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for October 21, 2009 were approved 3-0.
- 2. Public Comments:** Mr. Sanchez inquired about the status of a proposed regulatory amendment that the Board previously voted not to pursue regarding the discovery of the statements of charging parties. The Board informed him that there had been no change in status, nor was any change in status expected.
- 3. Chairman Report:** The 2009 California State Employee Food Drive has commenced. ALJ Soble is the coordinator for the ALRB. Over 750,000 pounds of food and cash donations were collected last year to help support Sacramento area families in need. The goal is to exceed that number this year. The ALRB has been invited to attend the Instituto Laboral de la Raza 2010 National Labor Awards Dinner on February 12, 2010, at the San Francisco Hilton Hotel, 333 O'Farrell Street. Member Shiroma has agreed to chair the ALRB's committee for the 21st Annual CCS Labor-Management Conference scheduled for March 24-26, 2010 in Anaheim. The CCS committee will meet on Thursday, November 5.
- 4. General Counsel Report:** General Counsel Lee conducted staff training in El Centro on November 3. Nine new charges have been filed in the regions since the last meeting -- 8 in the Salinas Region and 1 in the Visalia Region.

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. On October 28, 2009, the Board issued its decision in 35 ALRB No. 7 affirming the IHE's decision and setting aside the election.

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. On October 28, 2009, the Board issued its decision in this matter. An appeal, if any, is due November 30, 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 was held June 23 and 24, 2009. The IHE’s decision issued September 14, 2009. The UFW filed exceptions to the IHE’s decision on September 28, 2009. Reply briefs were received October 9, 2009. The matter is pending before the Board for decision.

COMPLAINT REPORT

NEW COMPLAINTS ISSUED

The Growers Company, Inc., 07-CE-70-SAL

On October 30, 2009 the Regional Director issued a complaint against The Growers Company, Inc. alleging that the employer terminated eleven (11) employees because they engaged in protected concerted activity (i.e., protesting the foreman’s decision to have two permanent rather than rotating closers).

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

One hearing and two prehearing conferences are scheduled:

Ace Tomato Company, Inc., 93-CE-37-VI

Prehearing Conference November 17, 2009 (10:00 AM)
Investigative Hearing to follow if necessary

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

Prehearing Conference November 17, 2009 to follow Ace Tomato PHC
Investigative Hearing to follow if necessary

Frank Pinheiro Dairy, 2009-CE-011-VIS
Prehearing Conference November 24, 2009 (10:00 AM)
Hearing scheduled December 14-17, 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:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

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

United Farm Workers, 06-CL-8-SAL (Formal Settlement Agreement)
Regional Director's response to the Board's administrative order was received November 3, 2009.

United Farm Workers, 06-CL-12-SAL (Formal Settlement Agreement)
Regional Director's response to the Board's administrative order was received November 3, 2009.

CASES SETTLED OR RESOLVED:

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

The Regional Director and the employer reached an informal settlement agreement resolving two (2) charges.

Sun Pacific Cooperative, Inc., 08-CE-065-VI

On October 19, 2009 the Regional Director closed the case as the respondent had met all the terms and conditions of the informal bilateral settlement agreement.

Lourenco Dairy, Case No. 08-CE-0-57-VI, et al.

On October 21, 2009 the parties reached an informal settlement agreement resolving four (4) ULP charges.

D'Arrigo Bros. of CA, 07-CE-12-SAL

On November 2, 2009 the hearing was taken off calendar as the parties reached an informal bilateral settlement agreement.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Decision issued October 28, 2009.

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

Decision issued October 28, 2009.

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 was received September 23, 2009. On October 1, 2009 the Board issued its decision finding that the prerequisites for mandatory mediation and conciliation were met and referred the matter to the State Mediation and Conciliation Service (SMCS) for mandatory mediation and conciliation. On October 5, 2009 the

SMCS provided the parties with a list of nine (9) mediators. In accordance with our regulations, the parties had seven (7) days to select a mediator from the list or mutually designate a mediator from a list of all qualified mediators maintained by the State. (See Regulations section 20403.) On October 8, 2009 Frank Pinheiro Dairy filed a petition for writ of review and request for immediate stay with the 5th DCA. On October 9, 2009 the court granted the immediate stay. On October 16, 2009 the ALRB filed the certified record and its preliminary opposition. Also on October 16, Frank Pinheiro Dairy filed its opening brief. Real Party in Interest filed its response brief on October 19, 2009. On October 30, 2009, the court issued an order dissolving the stay of the MMC process provided for in its previous order. The October 30, 2009 order also granted petitioner leave to file a reply within 10 days (November 9, 2009). On November 3, 2009 the Board filed a request for remand with the 5th DCA in order to consider arguments presented by the petitioner for the first time in its petition for writ of review.

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.

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, F058638

On October 8, 2009 Frank Pinheiro Dairy filed a petition for writ of review and request for immediate stay with the 5th DCA. On October 9, 2009 the court granted the immediate stay. On October 16, 2009 the ALRB filed the certified record and its preliminary opposition to the petition for writ of review and request for immediate stay. Also on October 16, Frank Pinheiro Dairy filed its opening brief. Real Party in Interest filed its response brief on October 19, 2009. On October 30, 2009, the court issued an order dissolving the stay of the MMC process provided for in its previous order. The October 30, 2009 order also granted petitioner leave to file a reply within 10 days (November 9, 2009). On November 3, 2009 the Board filed a request for remand with the 5th DCA in order to consider arguments presented by the petitioner for the first time in its petition for writ of review.

6. Special Projects

- a. Information Technology Update/Case Tracking System— The committee will meeting on Monday, November 9, 2009, at 9:00 a.m. with Consultant Steve Guida to prioritize outstanding projects including legal templates for ALJ's and attorneys.
- b. Financial Integrity and State Managers Accountability Act (FISMA) - The next FISMA meeting is scheduled for Monday, November 9, at 10 a.m.
- c. Policy Committee Report- Member Rivera-Hernandez submitted a package of general personnel policies approved by the committee for the Board and General Counsel's approval at the next meeting. The committee is finalizing the Fiscal Management section for distribution.

7. Legislation – *Update (if any) on SB 685, SB 789, AB 579 AB 783, AB 1501, and any other pending legislation affecting the ALRB.*

No new legislation has been proposed and there have been no changes to any pending legislation.

8. Regulations – *Update on public comment received regarding proposals to clarify familial voter eligibility exclusions and to clarify discovery regulation regarding exculpatory evidence.*

The Board voted 3-0 to adopt as proposed the amendments to Regulation 20352 regarding the clarification of the familial voter eligibility exclusions. In order to address the concerns raised in the written public comment received, the final statement of reasons will make clear that the inclusion of the concept of *in loco parentis* in the definitions of "parent" and "child" is not intended to allow the exclusion of voters based on more remote familial relationships such as nieces, nephews, or grandchildren.

The Board voted 3-0, in light of the written public comment received, to consider revising the proposed amendments to Regulation 20236 regarding discovery of exculpatory evidence. To address the concerns raised in the public comment, staff provided for consideration a draft revision addressing the portion of the regulation applying to statements of non-supervisory agricultural employees that contain both exculpatory and incriminatory evidence. Any revision decided upon would be subject to an additional 15-day public comment period.

9. Personnel – The new Field Examiner, Eunice Suarez, started working in the Salinas Regional Office last week.

10. Roundtable –

General Counsel Lee reported that regional staff have eliminated all backlogs and are up-to-date in the handling of investigations and charges. Chairman Almaraz expressed the Board's appreciation to the General Counsel and his staff for their diligent work.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.