

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 18, 2009

Time: 10:07 a.m.
Members Present: Chairman Almaraz, Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: Administrative Law Judge Soble, Board Counsel Heyck, Wender and Robinson; Analyst Massie and Student Assistant Ichikawa
Absent: Executive Secretary Barbosa

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for November 4, 2009 were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** Victoria Bradshaw will be returning to the Labor and Workforce Development Agency. The Labor and Workforce Development Agency senior staff meeting is scheduled for December 2, 2009, at 9:30 a.m. The Board's December 2 meeting will be moved to December 8 at 10 a.m.
- 4. General Counsel Report:** General Counsel Lee reported regional staff continue their timely processing of matters.
- 5. Executive Officer Report:**

ELECTION REPORT:

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

None.

PENDING ELECTION MATTERS:

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 on the companion ULP 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

Temple Creek Dairy, Inc., 2009-CE-048-VIS

Regional Director issued a complaint on November 9, 2009 alleging that the employer issued two disciplinary warnings to two employees and discharged and failed to recall one employee because they engaged in protected concerted activities, i.e., the workers presented a letter signed by them complaining about the mistreatment of their supervisor.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

One hearing scheduled:

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

Prehearing Conference held November 17, 2009. Prehearing conference order issued November 18, 2009. Investigative hearing to follow if necessary.

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

Prehearing Conference held November 17, 2009. Prehearing conference order issued November 18, 2009. Investigative hearing will follow if necessary.

Frank Pinheiro Dairy, 2009-CE-011-VIS

Prehearing Conference November 24, 2009 (10:00 a.m.)

Hearing scheduled December 14-17, 2009

No hearings in progress.

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

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

Decision issued November 17, 2009.

CASES PENDING EXCEPTIONS OR REPLY:

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

Exceptions due December 14, 2009

Replies due December 29, 2009

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

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

Exceptions due December 14, 2009

Replies due December 29, 2009

CASES SETTLED OR RESOLVED:

Vignolo Farms, 07-CE-95-VI

The regional director closed the case as the respondent, Vignolo Farms, had satisfactorily met all the terms and conditions of the informal bilateral settlement agreement.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:**United Farm Workers, 06-CL-8-SAL (Formal Settlement Agreement)**

On November 5, 2009 the Board issued an administrative order (Admin. Order 2009-16) approving the bilateral formal settlement agreement.

United Farm Workers, 06-CL-12-SAL (Formal Settlement Agreement)

On November 5, 2009 the Board issued an administrative order (Admin. Order 2009-17) approving the bilateral formal settlement agreement.

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. On November 5 and 6, 2009, respectively, the Employer filed its reply to opposition to petition for writ of review and notice of non-opposition to ALRB's

request for remand. On November 13, the Court issued an order requesting clarification of the parties' intentions by letter briefing.

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. On November 5 and 6, 2009, respectively, the Employer filed its reply to opposition to petition for writ of review and notice of non-opposition to ALRB's request for remand.

6. Special Projects

a. Information Technology Update/Case Tracking System—The committee met on November 9, 2009, to review priorities. Work continues with the main case tracking system. Accounting Officer Davis is working with Consultant Guida on integrating the trust fund. Mr. Guida is also working with Business Services Officer Reese on integrating the inventory database. Mr. Guida will research legal software for use by staff in both Headquarters and the regions and will present his findings at the next committee meeting on December 9, at 10:00 a.m.

b. Financial Integrity and State Managers Accountability Act (FISMA)—The task force met on Monday December 9 and reviewed the latest draft with the regional

directors. Revised sections are to be submitted by end of the day on December 18. The next meeting is scheduled for November 30 at 10:00 a.m.

c. Policy Committee Report-Member Rivera-Hernandez is awaiting submission of completed transmittal sheets. The travel reimbursement section will be distributed for review today.

7. **Legislation** – *Update, if any, on 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 discussed a staff-provided revision to the proposed amendment to Regulation 20236, subdivision (d). The revision was prepared as a result of the Board's decision at its November 4, 2009 meeting that it concurred with the contention made in written comment received that the original proposal failed to accurately track the language of *Giumarra Vineyards Corporation (1977) 3 ALRB No. 21*, on which the regulation is based. The Board voted 3-0 to defer the decision on whether to submit the revised language for further public comment until it had received the input of staff of the regional offices.
9. **Personnel** – Nothing new to report.
10. **Roundtable** – The Annual California State Employees Food Drive is underway. The Food Drive is providing volunteer opportunities on Furlough Fridays. Student Assistant Ichikawa reported on her recent visit to the Napa Valley which included a tour of the River Ranch Farmworker Housing Center and meetings with farm labor management contractor and the vice president of marketing of a Napa Valley winery. The Fair Political Practices Commission has new filing rules for Statements of Economic Interest.

The public meeting adjourned at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.