

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

December 8, 2009

Time: 10:00 a.m.
Members Present: Chairman Almaraz (telephone conference), Members Shiroma and Rivera-Hernandez
General Counsel: Michael Lee
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble, Board Counsel Heyck, Wender and Robinson; Analyst Massie.
Via Video Conference: Regional Director Alderete; Legal Counsel Kennedy, Field Examiners Delossantos and Alatorre

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for November 18, 2009 were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chairman Report:** Chairman Almaraz and General Counsel Lee reported on the Labor and Workforce Development Agency senior staff meeting on December 2, 2009, where Chairman Almaraz and EDD Director Patrick W. Henning were recognized for their service to the State of California in light of their pending retirements.
4. **General Counsel Report:** General Counsel Lee reported that a case previously reported as settled has not been resolved. The employer has once again laid the crew off requiring further investigation with the possibility of seeking injunctive relief as a remedy. The ALRB is spearheading outreach efforts with the Mexican Consulate's Office. Outreach efforts will primarily focus on the Northern California region and the Mixtec Indian population.
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. On November 30, 2009 the

employer filed a petition for writ of review with the 5th DCA. The certified record was mailed to the court on December 3, 2009 but has not been received.

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

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

One hearing scheduled:

Frank Pinheiro Dairy, 2009-CE-011-VIS

Prehearing Conference held November 24, 2009

The hearing is scheduled December 14-17, 2009. The parties have requested a 45-day continuance to pursue settlement of the case which is under consideration by the Executive Secretary. The parties have reached an agreement in principle but need additional time to consummate the agreement.

No hearings in progress.

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

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

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

Charging Party's declaration received December 3, 2009. The Respondent's declaration is pending.

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

Charging Party's declaration received December 3, 2009. The Respondent's declaration is pending.

CASES SETTLED OR RESOLVED:

Lourenco Dairy, 08-CE-57-VI, et al.

The Regional Director sent a closing letter as all the terms and conditions of the informal bilateral settlement agreement had been met.

Aukeman Farms, 06-CE-35-VI, et al.

The Regional Director sent a closing letter as all the terms and conditions of the Board's Order in 34 ALRB No. 2 had been met.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

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 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. The parties filed letter briefs with the court on November 20, 2009 (Respondent and Charging Party) and November 23, 2009 (Petitioner). A ruling on the Board's request is pending.

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. On November 13, the Court issued an order requesting clarification of the parties' intentions by letter briefing. The parties filed letter briefs with the court on November 20, 2009 (Respondent and Charging Party) and November 23, 2009 (Petitioner). A ruling on the Board's request is pending.

Lassen Dairy, Inc., F058940

On November 30, 2009 Lassen Dairy, Inc. filed a petition for writ of review of the Board's decision in (2009) 35 ALRB No. 7. The certified record was mailed to the court on December 3, 2009 but receipt has not been noted on the court's website docket.

Gallo Vineyards, Inc. (Roberto Parra), C063487

On November 24, 2009 Roberto Parra, the Real Party of Interest in Gallo Vineyards, Inc., filed a petition for writ of review of the Board's decision in (2009) 35 ALRB No. 6. The certified record is due December 11, 2009. The record is being prepared and should be available for mailing on Thursday, December 10, 2009.

6. Special Projects

a. Information Technology Update/Case Tracking System—The committee is meeting on Wednesday, December 9, at 10:00 a.m. Several new reports and functions will be installed tomorrow. Consultant Guida will report on his research on legal templates software which is being referenced in the current FISMA report to aid staff in Headquarters and regional offices.

b. Financial Integrity and State Managers Accountability Act (FISMA)—Updates to the FISMA report have been received and will be merged, formatted and circulated for approval.

c. Policy Committee Report—Members will verify the approval of the Travel Reimbursement Policy. Progress will continue on fiscal management and personnel policies as time permits given the press of case matters.

d. Request to Co-Host 35th ALRB Anniversary—The agency received a request to coordinate an ALRB 35th Anniversary Conference from Dr. Phil Martin who assisted with the 25th and 30th Anniversary Conferences. Dr. Martin proposes to follow the previous conference format with a target date of September 2010 for the conference. The Board voted 3-0 to work with Dr. Martin to put together an ALRB 35th Anniversary Conference with the caveat that the agency is unable to commit funds to defray costs of the conference, but will contribute staff for panels and discussions.

e. The 2010 Annual CCS Labor Management Conference (March 24-26, 2010) – The ALRB’s session entitled “How to Present a Case Before the Agricultural Labor Relations Board” was approved by the CSS conference committee for March 25, 2010 from 2:15pm-3:45pm. The panel discussion is designed for management and union representatives and attorneys who practice before the Agricultural Labor Relations Board (ALRB) and will focus on the filing, prosecution and settlement of unfair labor practice charges under the Agricultural Labor Relations Act (ARLA). This session will cover the advantages of seeking settlement of a charge at the earliest opportunity, effective preparation for and participation in the unfair labor practice hearings and insights into effective brief and motion writing. Participants include: UFW Legal Counsel Mario G. Martinez, Ventura County Agricultural Association General Counsel Robert P. Roy, ALRB Regional Director Lawrence Alderete, ALRB Staff Counsel Marv Brenner, and ALRB Administrative Law Judge Doug Gallop. Member Shiroma will organize a conference call with all panel participants.

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 –

- a. Further discussion was held in light of public comment received on section 22036(d) revising the proposal to clarify discovery regulations regarding exculpatory evidence. Based on public comment received, the proposed amendment has been revised. Staff recommended that the proposed amendment be revised to simply delete the phrase "purely and clearly" from the regulation, without also attempting to delineate the proper treatment of declarations that contain both exculpatory and incriminatory evidence. The Board voted 3-0 to approve the revised proposal as recommended.
- b. The rulemaking calendar needs to be submitted by January 30, 2010. A vote on submission of the rulemaking calendar is deferred until the next Board meeting on Wednesday, December 16. Any proposed subjects to be placed on the calendar must be submitted by the Board Members or staff prior to December 16.

9. Personnel – Nothing new to report.

10. Roundtable –

A retirement reception for Chairman Almaraz will be held on December 16th at 4:00 p.m. at Vallejo's Restaurant, 1331 O Street, Sacramento, CA.

The Instituto Laboral de la Raza is holding its 2010 Labor Awards Dinner on Friday, February 12, 2010, at the Hilton Hotel in San Francisco. Individual seating is \$200.

The public meeting adjourned at 11:00 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.