

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**January 20, 2010**

Time: 10:00 a.m.  
Members Present: Members Shiroma, Rivera-Hernandez, and Guerrero  
General Counsel: Michael Lee  
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,  
Board Counsel Heyck, Wender and Robinson; Analyst Massie;  
Student Assistant Ichikawa  
Others Present: Freddie Sanchez, UFCW Local 101; Tony Fazio, UFCW Local 101

**OPEN SESSION**

- 1. Approval of Minutes:** The Board minutes for December 16, 2009 were approved 2-0 with one abstention.
- 2. Public Comments:** Freddie Sanchez of the UFCW indicated that after the Board's November 4, 2009, meeting he spoke with the KCRA reporter covering the meeting and expressed the importance of the mission of the Board.
- 3. Acting Chair Report:** Introductions were made to the newly appointed Board Member, Willie Guerrero. Mr. Guerrero expressed his thanks to everyone who supported his appointment and looks forward to his new position.
- 4. General Counsel Report:** General Counsel Lee attended an ALRB election conducted in the Bay area on January 19 and commended staff on their commitment to the election process under difficult weather conditions.
- 5. Executive Officer Report:**

**ELECTION REPORT:**

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

**Kawahara Nursery Inc., 2010-NA-001-SAL**

On January 11, 2010 the UFW filed an NA seeking access to the agricultural employees of Kawahara Nursery, Inc.

**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 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 5<sup>th</sup> DCA. The certified record was filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent's brief is due February 16, 2010.

**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. On December 17, 2009, the Board issued its decision affirming the IHE's decision and certifying the majority no union vote. Accordingly, the UFW has been decertified as the bargaining representative of Henry Hibino Farms' agricultural employees.

**Kawahara Nursery, Inc., 2010-RC-001-SAL**

On January 12, 2010 the UFW filed a representation petition with the Salinas Regional Office seeking to represent the agricultural employees of Kawahara Nursery, Inc. The employer is a nursery located in Morgan Hill, San Lorenzo and Gilroy with 173 employees. An election was held on January 19, 2010 with the following results:

UFW	70
No Union	68
Unresolved Challenged Ballots	<u>28</u>
Total	166

Election objections, if any, are due January 26, 2010. The unresolved challenged ballots are outcome determinative and will be investigated by the Regional Director.

## **COMPLAINT REPORT**

### **COMPLAINTS ISSUED**

#### **H & R Gunlund Ranches, Inc., 2009-CE-063-VIS**

On December 17, 2009, the Visalia Regional Director issued a consolidated complaint alleging that the employer discriminatorily laid off and refused to reinstate a crew of approximately 40 workers because they refused to work while negotiating with the employer over an increase in wages.

#### **Quality Produce, LLC, 2009-CE-039-VIS**

On December 30, 2009, the Visalia Regional Director issued a complaint, backpay specification and order consolidating the compliance proceeding with the ULP proceeding. The complaint alleged that the respondent, Quality Produce, LLC, unlawfully discharged two agricultural employees because they engaged in protected concerted activity--the protected concerted activity was not described. The backpay specification provides backpay in the amount of \$4721 for the two workers. The matter is pending a hearing.

### **PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:**

#### **S.M.D. Vineyards, Inc., 2009-CE-004-SAL**

Prehearing: February 2, 2010

Hearing: February 23, 2010

No hearings are 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 filed December 14, 2009

Replies due January 19, 2010

**CASES PENDING BOARD DECISION OR ACTION:**

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

Exceptions filed December 14, 2009

Replies due January 19, 2010

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

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

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

**Henry Hibino Farms, 2009-RD-001-SAL**

Board decision issued December 17, 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 5<sup>th</sup> 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). On December 28, 2009, the court summarily denied the petition for writ of review. The petition for hearing was due January 7, 2010. No petition was filed with the Supreme Court. The MMC hearing before the mediator began on January 6, 2010.

## **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 5<sup>th</sup> 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). On December 28, 2009, the court summarily denied the petition for writ of review. The petition for hearing was due January 7, 2010. No petition was filed with the Supreme Court. The MMC hearing before the mediator began on January 6, 2010.

**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 filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent's brief is due February 16, 2010.

**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 was filed with the court on December 10, 2009. Petitioner's opening brief is due within 35 days (i.e., January 14, 2010).

**6. Special Projects**

- a. Information Technology Update/Case Tracking System — The committee met on January 12 and 19, 2009. A decision was made to review and confirm the most recent 10 years worth of data. A process was developed to achieve this goal. Additionally, a process was discussed to streamline processing of legal documents. Staff will meet before the next meeting scheduled for February 2 to discuss templates and procedures.
- b. Policy Committee Report-Several new policies and procedures have been developed and will be released for review this week.
- c. Financial Integrity and State Managers Accountability Act (FISMA) - The ALRB's FISMA report for 2009 was filed on December 30, 2009 with the Governor's Office and the Labor Agency and was also sent electronically to a number of interested persons.

**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 (Lab. Code § 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. On January 19, 2010, the bill was stricken from the Senate file.

**AB 1659, as introduced, Huber. State government: agency repeals.**

This bill would create the Joint Sunset Review Committee to identify and eliminate waste, duplication, and inefficiency in government agencies, as defined, and to conduct a comprehensive analysis of every agency to determine if the agency is still necessary and cost effective. The bill would require each agency scheduled for repeal to submit a report to the committee containing specified information. The bill would require the committee to take public testimony and evaluate the agency prior to the date the agency is scheduled to be repealed, and would require that an agency be eliminated unless the Legislature enacts a law, based upon a recommendation endorsed by a vote of the majority of the members of the committee, to extend, consolidate, or reorganize the agency. The bill would specify the composition of the committee, which would be appointed by the President pro Tempore of the Senate, the Speaker of the Assembly, and the Governor, and certain aspects of its operating procedure. The bill would also make a statement of legislative intent to enact legislation that provides for the repeal of every entity of state government, excluding an agency that is constitutionally created or an agency related to higher education. The bill was read for the first time on January 19, 2010, and sent to print.

**SB 835, as introduced, Strickland. Government reorganization: realignment or closure.**

This bill would enact the Bureaucracy Realignment and Closure Act of 2011. It would establish the Bureaucracy Realignment and Closure Commission in state government with a specified membership. Beginning on January 1, 2011, the Controller, the Director of Finance, the Legislative Analyst, the Legislative Counsel, the Milton Marks "Little Hoover" Commission on California State Government Organization and Economy, and the State Auditor would be required to develop recommendations for the closure or realignment of state bureaucracies for consideration by the commission. It would require the commission to independently evaluate the recommendations, conduct 3 public hearings, and, by January 1, 2012, have at least one member of the commission visit each state bureaucracy considered for realignment or closure. This bill would require the commission, not later than July 15, 2012, to submit a report of its final recommendations to the Governor and the Legislature that establishes a list of state bureaucracies that are proposed to be realigned or abolished. It would require the Governor, upon approval of the list of recommendations, to prepare the list as a reorganization plan and to submit the plan to the Legislature under the provisions relating to the Governor's reorganization plans. This bill was introduced, read, sent to print and to the Rules Committee for assignment on January 4, 2010.

8. **Regulations** –A 15-day notice was sent in December regarding a revision of the proposal to clarify the discovery regulation regarding exculpatory evidence. The United Farm Workers provided comment and the comment period is now closed. The Board will vote on the proposed revision at its February 3, 2010, Board meeting.
9. **Personnel** – Nothing new to report.
10. **Roundtable** – There will be a conference call on Monday, January 25, 2010, with the panelists presenting *How to Present a Case Before the Agricultural Labor Relations Board* at the 21<sup>st</sup> Annual Center for Collaborative Solutions Labor Management Conference on March 25-26, 2010, in Anaheim, CA.

The public meeting adjourned at 10:40 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**