

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

March 16, 2010

Time: 10:00 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Heyck, Wender and Robinson; and Analyst Massie
Other: Rodney Wilson, Consultant to Assembly Speaker Perez

OPEN SESSION

1. **Approval of Minutes:** The Board minutes for March 3, 2010, were approved 3-0 with minor changes.
2. **Public Comments:** None.
3. **Chairman Report:** LWDA sent notification that all out-of-state travel blankets are rescinded and future trips need to be submitted individually 30 days in advance with an explanation of the dire circumstances requiring participation. The Regional Directors meeting was rescheduled to April 7, 2010, at 1:30 p.m. The LWDA Assembly Budget Committee prehearing is scheduled for 1:30 p.m. on March 22, 2010. Until further notice, only vital and mission critical purchases for the ALRB will be approved.
4. **General Counsel Report:** General Counsel Lee is in the Visalia Regional Office today.
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 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 filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent ALRB's brief was filed February 16, 2010. Petitioner's reply brief is due March 15, 2010.

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

The unresolved challenged ballots are outcome determinative and will be investigated by the Salinas Regional Office. The UFW filed objections to the election on January 26, 2010. The matter is pending the regional director's report on unresolved challenged ballots and the Executive Secretary order on election objections.

Frank Pinheiro Dairy, 2010-RD-001-VIS

On February 24, 2010, agricultural employee Guillermo C. Rios filed a decertification petition with the Visalia Regional Office seeking to oust the incumbent union UFCW Local 10 as the bargaining representative of the employees of Frank Pinheiro Dairy. The employer is a dairy located in Strathmore with approximately 23 employees. On March 1, 2010, the Regional Director blocked the election due to the employer's alleged failure to fully comply with the remedial order contained in a bilateral settlement agreement and because the employer, through its conduct, has delayed the mandatory mediation and conciliation process so as to prejudice the union's ability to effectively represent unit employees. Employer and Petitioner filed requests for review of the Regional Director's decision blocking the election. On March 15, 2010, the Board issued Administrative Order 2010-07 allowing for a response from the certified bargaining representative due postmarked March 18, 2010.

The Hess Collection Winery, 2010-RD-001-SAL

On March 11, 2010, Rybicki & Associates, representing a group of agricultural employees at The Hess Collection Winery, filed a decertification petition with the Salinas Regional Office seeking to oust the incumbent union UFCW Local 1096, as the bargaining representative of the employees of The Hess Collection Winery. The employer is a grower of premium wine grapes with operations in Mt. LaSalle, Veeder Hills, Veeder Crest and Veeder Summit. The winery employs approximately 49 employees. The pre-election conference is scheduled for 5 p.m. on March 16, 2010. An election, if appropriate, would be held on Thursday, March 18, 2010.

COMPLAINT REPORT

COMPLAINTS ISSUED

None.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

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

Prehearing Conference: March 29, 2010

Hearing: April 27, 2010

Quality Produce, LLC., 2009-CE-039-VIS

Prehearing Conference: April 20, 2010

Hearing: May 11, 2010

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

Frank Pinheiro Dairy dba Pinheiro Dairy & Milanesio Farms, 2009-MMC-02

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:

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

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

Board granted the General Counsel's motion to close the case.

The UFW filed a request for reconsideration on February 12, 2010.

The matter is pending decision by the Board. On March 4, 2010, the Board denied the motion for reconsideration and granted reconsideration on other grounds sua sponte.

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

Board granted the General Counsel's motion to close the case.

The UFW filed a request for reconsideration on February 12, 2010.

The matter is pending decision by the Board. On March 4, 2010, the Board denied the motion for reconsideration and granted reconsideration on other grounds sua sponte.

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). On December 28, 2009, the court summarily denied the petition for writ of review. The petition for hearing is due January 7, 2010. No petition was filed with the Supreme Court. The MMC hearing before the mediator began on January 6, 2010. On January 21, 2010, the Board issued an order staying the mandatory mediation process pending reconsideration by the Board of its decision and order in 35 ALRB No. 5. On February 3, 2010, the Board requested briefing on questions concerning Labor Code section 1164 (a). Both the employer and union filed responsive briefs on February 16, 2010. The matter is pending before the Board for decision. Reply briefs were received February 23, 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. The Board filed a Motion for Summary Judgment/Summary Adjudication on December 18, 2009. Plaintiffs filed their Opposition and Declarations in Support Thereof on February 23, 2010. The Board's Reply is due on March 4, 2010. Hearing on the motion was scheduled for March 9, 2010. A tentative ruling 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 filed with the court on December 8, 2009. Petitioner's opening brief was filed January 12, 2010. Respondent's answering brief was filed February 16, 2010. Petitioner's reply brief was filed March 8, 2010. All briefing has been completed.

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 was filed January 29, 2010. ALRB's response brief was filed March 1, 2010. The UFW's filed its response brief on March 12, 2010. Petitioner's reply brief is due April 6, 2010.

San Joaquin Tomato Growers, Inc., C064352

On March 5, 2010, the United Farm Workers of America filed a petition for writ of review of the Board's Administrative Order No. 2010-04. On March 10, 2010, the ALRB requested an extension of time to file certified record to March 30, 2010. The request was granted on March 12, 2010. On March 15, 2010, the ALRB filed a motion to dismiss the petition for writ of review.

Ace Tomato Company, Inc., C064360

On March 5, 2010, the United Farm Workers of America filed a petition for writ of review of the Board's Administrative Order No. 2010-04. On March 10, 2010, the ALRB requested an extension of time to file certified record to March 30, 2010. The request was granted on March 12, 2010. On March 15, 2010, the ALRB filed a motion to dismiss the petition for writ of review.

6. Special Projects

- a. Information Technology Update/Case Tracking System—A meeting on the trust fund portion of case tracking will be held on Monday, March 22 at 10 a.m. Sample Board decisions have been forwarded to Consultant Guida to begin template designs. The IT Committee met to discuss power failures to the server room.
- b. Policy Committee Report— 2010 Telework Policy & Procedures: The committee will meet to review the telework policy and recently released security procedures.

7. Legislation – Update, if any, on pending legislation affecting the ALRB.

SB 1474, as introduced, Steinberg. Labor representatives: elections.

This is a card check bill that is identical to SB 789, which was vetoed by the Governor in 2009.

Existing law prohibits employers from engaging in unfair labor practices, including interfering in the election by agricultural employees of labor representatives to engage in collective bargaining for the designated bargaining units. Existing law also provides criminal and civil penalties for any employer or person who engages in unfair labor practices as determined by the Agricultural Labor Relations Board and the courts. Existing law provides for a secret ballot election for employees in agricultural bargaining units, as defined, to select labor organizations to represent them for collective bargaining purposes.

This bill would permit agricultural employees, as an alternative procedure, to select their labor representatives by submitting a petition to the board accompanied by representation cards signed by a majority of the bargaining unit. The board would be required to conduct an immediate investigation to determine whether to certify the

labor organization as the exclusive bargaining representative for the particular agricultural employees. Within 5 days after receiving a petition, the board would be required to make a nonappealable administrative decision. If the board determined that the representation cards meet specified criteria, then the labor organization would be certified as the exclusive bargaining representative. If the board determined that the representation cards were deficient, it would notify the labor organization of the deficiency and grant the labor organization 30 days to submit additional cards.

This bill would extend the existing prohibitions and penalties to employers who engage in unfair labor practices with regard to a majority signup election.

This bill would require that the board keep the information on the representation cards confidential.

The bill was introduced, read for the first time, and sent to the Committee on Rules for assignment on February 19. On March 11, 2010, the bill was sent to the Committee on Labor and Industrial Relations.

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. On January 21, 2010, this bill was sent to the Committee on Governmental Organization. The bill is set for hearing on April 13, 2010.

8. **Regulations** – *Update on status of rulemaking process regarding proposals on exculpatory evidence and familial voter eligibility exclusions adopted by the Board on November 4, 2009 and February 3, 2010.* – Nothing new to report. The Office of Administrative Law has until April 2, 2010, to act on the Board's submission.

9. Personnel – Nothing new to report.

10. Roundtable –

There has been a change in the presenters of the ALRB's breakout session at the 21st Annual CCS Labor Management Conference. In light of current budget constraints, General Counsel Lee will replace Regional Director Alderete and Assistant General Counsel Brenner on the panel. The ALRB will not incur travel expenses for this event. Additionally, Ronald Barsamian of Barsamian & Moody has agreed to replace Rob Roy, President and General Counsel of the Ventura County Agricultural Association, as a presenter on the panel.

The ALRB has been informed by the United State Employee's Campaign of the pending receipt of an award for participation in the campaign.

General Counsel Lee and Board Members Shiroma and Guerrero met with legislators and growers at the Western Growers Legislative Reception on March 10, 2010.

The Fair Political Practices Commission Annual Statement of Economic Interest Form 700 is due on April 1, 2010.

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

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.