

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

June 2, 2010

Time: 10:05 a.m.
Members Present: Members Shiroma, Rivera-Hernandez and Guerrero
General Counsel: General Counsel Michael Lee
Staff Present: Executive Secretary Barbosa, Administrative Law Judge Soble,
Board Counsel Heyck, Wender and Robinson, Analyst Massie, and
Student Assistant Ichikawa

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for May 19, 2010, were approved 3-0.
- 2. Public Comments:** None.
- 3. Chairman Report:** State Compensation Insurance Funds has informed us that there will be a possible rate increase by as much as 25 percent. The ALRB's response to Finance's request for verification of projected IT cost savings was discussed and approved.
- 3. General Counsel Report:** Four charges have been filed in Visalia since the last report. General Counsel Lee met with the El Centro office staff last week. Various options to lease or move the El Centro office and staff were discussed.
- 4. 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 was

filed March 8, 2010. On May 26, 2010, the 5th DCA has summarily denied the petition for review filed by Lassen. Since it was a summary denial, any petition for review in the Supreme Court is due within 10 days (i.e., June 7, 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 were investigated by the Salinas Regional Office. The UFW filed objections to the election on January 26, 2010. On March 29, 2010, the Regional Director issued his report on challenged ballots. The Employer filed exceptions to the Regional Director's report on April 9, 2010. The matter is pending Board review of the Employer's exceptions and the Executive Secretary's order on election objections.

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

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. On March 16, 2010, the Regional Director blocked the election. On March 26, 2010, the Employer filed a request for review of the Regional Director's blocking decision. On April 7, 2010, the Union filed a response to the Employer's request for review. On April 9, 2010, the decertification petitioner's representative filed a request for review of the Regional Director's blocking decision. On May 20, 2010, the Board issued its decision denying the Employer's request for review and upholding the Regional Directors decision to block the election. (Admin. Order No. 2010-11.)

Frank Pinheiro Dairy, 2010-RD-002-VIS

On April 29, 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. The Regional Director has decided to go forward with the election but impound the

ballots. His letter informing the parties of the basis for the impoundment will be issuing this afternoon. An election was held on May 6, 2010 with the following results:

| | |
|-------------------------------|----------|
| UFCW, Local 5 | 4 |
| No Union | 20 |
| Unresolved Challenged Ballots | <u>1</u> |
| Total | 25 |

The number of unresolved challenged ballots is insufficient to affect the outcome of the election. Election objections, if any, are were due March 13, 2010. As neither party filed objections to the election, the Executive Secretary issued a certification of results of election on May 25, 2010.

COMPLAINT REPORT

COMPLAINTS ISSUED

United Farm Workers (San Martin Mushrooms, Inc.), 07-CL-05-SAL

The complaint alleges that the UFW and employer entered into a Letter of Understanding without such agreement being ratified by a majority of the voting members of the unit as contrary to the union's constitution and, further, that the UFW failed to take this matter to arbitration despite repeated requests.

PREHEARING, HEARING OR SETTLEMENT CONFERENCES SCHEDULED:

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

Prehearing Conference held May 20, 2010

Hearing: June 8, 2010

San Joaquin Tomato Growers, 93-CE-38-VIS

The Executive Secretary granted the UFW's request for a prehearing conference and a continuance of the hearing.

Prehearing Conference: June 15, 2010

Hearing: June 29, 2010

We have now received a request to continue the hearing to July. Dates are currently being discussed.

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

The Executive Secretary granted the UFW's request for a prehearing conference and a continuance of the hearing.

Prehearing Conference: June 15, 2010

Hearing: June 29, 2010

We have now received a request to continue the hearing to July. Dates are currently being discussed.

Deardorff Family Farms, 2009-CE-057-VIS

Prehearing Conference: July 20, 2010

Hearing: August 3, 2010

HEARINGS HELD:

None.

CASES PENDING ALJ/IHE DECISION:

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

Pending receipt of transcripts and filing of post-hearing briefs

ALJ/IHE DECISIONS ISSUED:

None.

CASES PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION OR ACTION:

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

CASES SETTLED OR RESOLVED:

Frank Pinheiro Dairy, 2010-RD-002-VIS

The Executive Secretary issued a certification of results of election on May 25, 2010.

United Farm Workers (Monterey Mushroom, Inc.) 07-CL-01-SAL

The Regional Director approved the Charging Party's request to withdraw the charge and thereafter withdrew the underlying complaint. According to the amended complaint, the charging party alleged that the UFW had failed to process to arbitration a grievance concerning the discharge of the charging party.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

None.

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 for summary judgment was held March 9, 2010, and the motion for summary judgment was granted. Entry of the order is still pending. The order granting the motion for summary judgment and judgment have been filed and served. Plaintiffs have approximately 30 days (June 14, 2010) to file a notice of appeal. If no appeal is filed, then the case can be closed.

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. On May 26, 2010, the 5th DCA has summarily denied the petition for review filed by Lassen. Since it was a summary denial, any petition for review in the Supreme Court is due within 10 days (i.e., June 7, 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 was filed January 29, 2010. ALRB's response brief was filed March 1, 2010. Real Party in Interest United Farm Workers of America's response brief was filed on March 23, 2010. Petitioner's reply brief was

filed on April 23, 2010. All briefing has been completed. On April 28, 2010, the court directed the Petitioner, Roberto Parra, to demonstrate in writing that the petition for writ of review was filed in the appropriate court. On May 10, 2010, petitioner filed its response to the court's request. On May 18, 2010, the Supreme Court transferred this case from the 3rd DCA to the 1st DCA for consideration.

Miscellaneous—Executive Secretary Barbosa has contacted the regional directors regarding their availability for the next Regional Directors' Meeting. Executive Secretary Barbosa will attend the next LWDA senior staff meeting on Tuesday, June 8, 2010.

6. Special Projects

- a. Information Technology Committee: Update/Case Tracking System Policy & Procedures—The Information Technology Committee met on May 27th regarding finalizing the Board decision template. The next committee meeting will be held on June 8 to discuss compliance reports. Trust fund reports will be available in the near future. Member Shiroma attended the LWDA/EDD Active Directory Consolidation meeting on May 27th.
- b. Policy Committee Report—The Policy Committee circulated the revised Attendance and Leave policy for review.
- c. Transparency Plan (Executive Orders S-08-09 and S-20-09)
On April 27, 2010, the Office of the Chief Information Officer sent a notice to all agencies within the Executive Branch that they are required to provide a Transparency Plan to the Office of the Inspector General, to include a listing of all report types within the scope the Executive Order(s) and a schedule for entering existing records to the Transparency Web site including timeline, record type and number of records. The ALRB's transparency plan is due to the Office of the Inspector General on June 11, 2010. The draft response was reviewed by the Board.
- d. Master Calendar – The Master Calendar template was reviewed and additions will be made to the form.

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. The bill was heard on April 13, 2010. On April 19, 2010, the bill passed out of committee and was re-referred to the Committee on Appropriations. On April 19, 2010 the bill passed out of committee and was re-referred to the Committee on Appropriations. On May 3, 2010, the bill was placed on the Appropriations suspense file. On May 27th the bill was passed out of committee.

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 was set for hearing on April 13, 2010 and failed passage in committee. The bill was set for hearing on April 22, 2010 (pending rules waiver). On April 19, 2010 Senate Rule 21.5(k)(2) was suspended allowing for reconsideration and vote. On May 20 the bill was placed on the suspense file. On May 27th the bill was held in committee and under submission.

The following bills do not presently have any impact on the ALRB but are being tracked in the event of amendments that would extend their provisions to entities such as the ALRB:

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. This bill is consistent with provisions of existing law governing the sunset review process for boards and bureaus under DCA. Because the bill does not establish new sunset dates for any state agencies, this bill is limited to the boards and bureaus under DCA already scheduled for sunset review pursuant to existing law. Accordingly, the bill as introduced does not include boards such as the ALRB. It will continue to be

tracked in the event that an amendment broadens the scope of the bill. The April 7, 2010 amendments did not change the scope of the bill.

The bill was read for the first time and sent to print on January 19, 2010. On February 4, 2010, the bill was referred to the Committee on Business and Professions. On April 6, 2010, the bill was passed from committee, amended, and a vote was taken to not accept the amendments. On April 7, 2010, the bill was read a second time and amended.

AB 2537, as introduced, Silva. State agencies: adjudications: presiding officers.

Existing law, the Administrative Procedure Act, provides for the conduct of administrative adjudication proceedings of state agencies. Existing law provides for the disqualification of a presiding officer for bias, prejudice, or interest in the proceeding. Existing law authorizes an agency that conducts an adjudicative proceeding to provide by regulation for peremptory challenge of the presiding officer. This bill would require that an agency that conducts an adjudicative proceeding provide by regulation for peremptory challenge of the presiding officer in cases where the presiding officer is an administrative law judge. The April 6 amendments added the following provision, which effectively exempts the ALRB from its provisions.

(e) Subdivision (d) shall not apply to an agency that has five or fewer administrative law judges and has an existing system of internal appellate review for requests for disqualification of an administrative law judge in which the disqualification determination is made by the agency.

The bill was introduced on February 19, 2010. The bill was read for the first time on February 22 and referred to the Committee on Business and Professions on March 18. On April 6, 2010, the bill was set for the first hearing. The hearing was cancelled at the request of the author. On April 14, 2010, the bill was amended and re-referred to the Committee on Business, Professions and Consumer Protection, read a second time and amended.

8. **Personnel** – The renewal of the agreement to hire students from the Foundation was approved. Additionally, the continuation of the student assistant position in Salinas and hiring a student to replace the Board’s current student assistant when her term ends was agreed upon.

9. **Roundtable –**

Member Shiroma will attend the Center for Collaborative Solutions conference planning meeting on June 3, 2010. It was agreed the Board will continue as a non-paying member of the organization.

The public meeting adjourned at 11:35 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.