

Agricultural Labor Relations Board

Report to the Legislature



Fiscal Year 2008-09

Members of Board

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¹ Appointed March 4, 2009. Separated March 31, 2009

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Introduction

This report is being submitted pursuant to Labor Code section 1143, which mandates that the Agricultural Labor Relations Board (ALRB) annually report to the Legislature and to the Governor on the cases heard; decisions rendered; the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board; and an account of moneys it has disbursed (monetary awards to farm workers in unfair labor practice cases).

During fiscal year 2008/09 (FY 08/09), the work of the Board and General Counsel continued to focus on increasing efficiency in moving cases and complaints through the investigative and appellate processes respectively. In particular, the General Counsel's office placed greater emphasis on the resolution of election and Unfair Labor Practice (ULP) complaints. For example, while the number of ULP's filed in FY 08/09 decreased to 120 from 274 filed during the previous year (when the ALRB experienced an extraordinary increase), the General Counsel's office increased its investigative and legal work on the continuing caseload which resulted in more settlements, dismissals, withdrawals and issuance of complaints (212 total versus 118 in FY 07/08, an increase of 80%).

Additionally, while the number of decisions issued by the Board decreased by one in FY 08/09, the number of Administrative Orders issued by the Board increased by 150 percent (6 issued in 07/08 and 15 issued in 08/09). Further, the number of hearings held by Administrative Law Judges on either ULP or election matters increased 125 percent in FY 08/09 (4 held in FY 07/08 while 9 held in FY 08/09). Clearly, the emphasis was on the resolution of ULP and election matters.

As part of the effort to increase progress in resolving the large and complex caseload in May 2008, the Board's General Counsel adopted a policy of completing investigations of unfair labor practice charges within 180 days and making a disposition of any charge within the next 30 days. Although previous policy required that initial investigations of unfair labor practice charges be completed within 45 days, there was no policy directive related to the completion of the overall investigation and disposition of the charge. In addition, the General Counsel adopted an initiative directed at resolving all charges 400 days old or older.

These combined policies yielded extraordinary results. The Board's dedicated regional staff reduced the number of unfair labor practice charges pending on

July 1, 2008 from 260 to 168 as of June 30, 2009. Staff did so even though an additional 120 charges were filed during FY 08/09. In other words, staff reached dispositions on a total of 212 charges by sending charges to complaint, dismissing charges for the lack of a prima facie case, obtaining withdrawals, or facilitating settlements.

In addition, regional staff conducted six representation elections and tried six complaints in unfair labor practice hearings.

In short, regional office staff continued their dedicated, efficient efforts on behalf of the people of the State of California.

The Board and General Counsel will have challenges in fiscal year 2009/10 as the serious budget crisis affecting all of California has resulted in the loss of additional ALRB staff. The Board and General Counsel have made every effort to lessen the losses to Regional Staff; however, the reality is that an increase in election activity could overwhelm the already depleted field staff who must also investigate election objections and unfair labor practice charges. We however, recognize that extraordinary times require extraordinary measures and we are committed to ensuring that the election process for agricultural workers and agricultural employers is fair, unbiased and speedy as intended by the creators of the Agricultural Labor Relations Act (ALRA).

In the interest of protecting privacy rights of the ALRB's employees, all sensitive information including names, salaries, and duties of ALRB personnel is provided under separate cover and can be obtained through a written request to the Executive Secretary.

J. Antonio Barbosa
Executive Secretary
Agricultural Labor Relations Board

Decisions Issued By the Board in Fiscal Year 2008-09

The Board issued six decisions in fiscal year 2008-09. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website: www.alrb.ca.gov).

Sun Pacific Cooperative Incorporated (2008) 34 ALRB No. 4

The Employer filed a motion to deny access to the United Farm Workers of America (UFW) on July 25, 2008. The Board found that declarations submitted by the Employer along with its motion supported allegations that UFW agents came on the property without first filing a Notice of Intent to Take Access (NA), which constituted a prima facie case of intentional or reckless disregard for the Board's access rule. The Board therefore set that allegation for hearing. The Board also set for hearing the allegation that the UFW agents came on the property during work hours in violation of the Board's access rule.

The Board found that the Employer's declarations did not support a prima facie case that the UFW representatives had harassed employees, significantly disrupted Employer's agricultural operations or endangered Employer's property or employees; therefore, the Board did not set these allegations for hearing.

The Board also ordered that the parties participate in a telephonic settlement conference prior to the hearing for the purpose of exploring voluntary settlement of the matter as encouraged by Board regulation section 20900 (e)(2).

Sun Pacific Cooperative Incorporated (2008) 34 ALRB No. 5

The Employer filed a motion to deny access to the United Farm Workers of America (UFW) on October 21, 2008. The declarations accompanying the Employer's motion reflected that twice on the same day the UFW's organizer spoke with employees after the proper access period for no more than six minutes and that he arrived early on at least two occasions and waited near the crew for 5-15 minutes prior to the meal break, though there was no indication that his early arrival caused any disruption of work. Citing prior cases holding that briefly exceeding the proper access periods does not constitute "significant disruption" of agricultural operations, the Board concluded that the brief overstay in the present case of five or six minutes did not constitute a significant disruption of work. Nor was there any indication of intentional harassment of the employees or employer. Lastly, the Board concluded that the limited number of incidents recounted in the declarations did not establish a pattern of de minimis violations of the access rules that reflects an intentional or reckless disregard for the access rules. Therefore, the Board denied the Employer's motion to deny access.

Gallo Vineyards, Inc. (2008) 34 ALRB No. 6

Following a decertification election held on June 25, 2007 for all agricultural employees of Gallo Vineyards, Inc., the incumbent union, the United Farm Workers of America (UFW), filed eight election objections seeking to overturn the election. The Board affirmed the dismissals of Election Objections One, Two, Three, Four, Five and Eight by the Executive Secretary. The Board held that the Executive Secretary properly found that there was no statutory contract bar to the decertification petition as alleged in Objection One and that the premature extension doctrine did apply. As a result, there were no erroneous factual allegations in the decertification petition as to the lack of a statutory contract bar as alleged in Objection Three. The Board held that the Executive Secretary's dismissal of Objection Two was proper. The decision of a Regional Director to direct, instead of block, an election is only reviewable as an election objection, and the showing of alleged non-compliance by Gallo with the remedial Board Order issued in 30 ALRB No. 2 by two declarations, although disconcerting, was insufficient to have affected the outcome of the election. The Board also held that the Executive Secretary properly dismissed Objections Four and Five, which were based on the same facts as dismissed unfair labor practice charges. The Board found that the Executive Secretary's dismissal of those charges was not pro forma as argued by the UFW, but instead was required under *Mann Packing, Inc. (1989) 15 ALRB No. 11* and *Richard's Grove and Saralee's Vineyards (2007) 33 ALRB No. 7* because the election objections and dismissed unfair labor practice charges were coextensive in their legal merits, i.e., it would have been impossible to adjudicate the election objections without reaching legal conclusions as to the merits of the dismissed unfair labor practice charges. The Board also held that the Executive Secretary properly dismissed Objection Eight because the UFW had sufficient time to respond to a flyer circulated by the Petitioner.

L.E. Cooke Company (2009) 35 ALRB No. 1

Following a decertification election held on April 9, 2008 for all agricultural employees of L.E. Cooke Company, the incumbent union, the United Farm Workers of America (UFW), filed five election objections seeking to overturn the election. The Board affirmed the Executive Secretary's order dismissing Objections One and Two. The Board rejected the UFW's argument that the parties had entered into a contract with a three-year duration clause that barred the decertification petition, finding that the only reasonable conclusion from the face of the documents presented was that the agreement between the parties in existence when the petition was filed had a duration of one year, thus the petition was timely filed. The Board also affirmed the Executive Secretary's dismissal of Objections Four and Five, holding that the supporting declarations failed to reflect coercive or intimidating circumstances that restrained workers in their right to freely cast ballots.

Woolf Farming Co. (2009) 35 ALRB No. 2

The Board affirmed the Administrative Law Judge's (ALJ) findings of fact and conclusions of law, and adopted his recommended decision. The ALJ found that although the charging party had engaged in protected concerted activity, the evidence was insufficient to raise an inference that the charging party's discharge was motivated by his protected activity. The Board noted that that ALJ's findings of fact necessarily were based in large part on credibility determinations and that a review of the record revealed no basis to disturb those determinations.

Hess Collection Winery (2009) 35 ALRB No. 3

This was a compliance matter arising from an earlier case, *Hess Collection Winery* (2003) 29 ALRB No. 6. Employer, Hess Collection Winery (Hess) and the United Food and Commercial Workers, Local 5 (UFCW) sought to enter into a private party settlement purporting to resolve all outstanding issues between the parties. The settlement did not include retroactive amounts for wages and benefits included in a mediator-imposed collective bargaining agreement that was affirmed by a final order of the Board in its decision at 29 ALRB No. 6. The collective bargaining agreement should have taken effect on October 1, 2003, but its implementation was delayed while Hess sought court review of the Board's decision. The collective bargaining agreement was finally implemented on November 28, 2006. The Board held that the issue of payment for the October 1, 2003 to November 28, 2006 period remained a compliance matter within the Board's jurisdiction to enforce. The Board drew no conclusions as to the merits of the parties' settlement agreement. Rather, the Board held that because the parties' settlement agreement sought to compromise a final Board order, the parties were required to present their resolution of the matter as a formal settlement agreement pursuant to the provisions of Board Regulation section 20298(f). The Board held the 60-day enforcement provision in Labor Code section 1164.3, subdivision (f) to be no bar, as that provision relates only to reducing the Board's order to a judgment where no review is sought in the Court of Appeal. Thus, the decision issued by the Third District Court of Appeal constitutes a judgment that can still be enforced through appropriate proceedings in the appropriate court.

Board Administrative Orders

2008-05	Boschma Dairy & Sons	2008-MMC-01	07/22/08	Order Dismissing Request for Mandatory Mediation and Conciliation
2008-06	Sun Pacific Cooperative Incorporated	2008-PM-001	08/19/08	Order Granting Motion for Withdrawal of Motion to Deny Access and Bar Organizers and Organizations; Order Taking Matter Off Calendar
2008-07	The Hess Collection Winery	99-CE-23-SAL, et al.	08/29/08	Order Denying General Counsel's Request for Special Permission to Appeal Ruling of Administrative Law Judge
2008-08	Boschma Dairy & Sons	2008-MMC-02	09/08/08	Order Directing Parties to Mandatory Mediation and Conciliation
2008-09	Gallo Vineyards, Inc.	07-RD-1-SAL	11/19/08	Order Setting Time for Responses to Certified Bargaining Representative's Motion for Reconsideration
2008-10	Gallo Vineyards, Inc.	07-RD-1-SAL	12/04/08	Order Granting General Counsel's Motion to Intervene
2008-11	Boschma & Sons Dairy	2008-MMC-02	12/24/08	Order Making Mediator's Report Final
2009-01	Gallo Vineyards, Inc.	07-RD-01-SAL	01/07/09	Order Denying Certified Bargaining Representative's Motion for Reconsideration
2009-02	Artesia Dairy	07-CE-28-VI	01/27/09	Order to Open and Count Challenged Ballots

2009-03	Hess Collection Winery	2003-MMC-01	02/9/09	Order Requesting Briefing on Novel Issues
2009-04	Hess Collection Winery	2003-MMC-01	03/02/09	Request for Declaration on Service of Board's Order Requesting Briefing on Novel Issues
2009-05	Hess Collection Winery	2003-MMC-01	03/05/09	Order Setting Forth Revised Briefing Schedule for Submission of Briefs on Novel Issues
2009-06	Hess Collection Winery	2003-MMC-01	03/13/09	Order Granting Union's Request to File a Late Submission
2009-07	Cieniga Farms, Inc.	00-CE-334-EC	06/05/09	Order Granting Motion to Make Case Eligible for Payout from the Agricultural Employee Relief Fund
2009-08	San Joaquin Tomato Growers	93-CE-38-VIS	06/18/09	Order Granting Request for Additional Time to File Opposition to Regional Director's Motion to Close

Litigation

In the majority of cases, parties to decisions of the Board file petitions for review in the courts of appeal pursuant to Labor Code section 1160.8. Therefore a significant portion of the Board's workload is comprised of writing and filing appellate briefs and appearing for oral argument in those cases. At times the Board is also required to defend against challenges to its jurisdiction and other types of collateral actions in both state and federal courts.

A list of cases on the Board's litigation docket for fiscal year 2008/09 and summaries of those cases is provided below.

***Artesia Dairy, a Sole Proprietorship v.
Agricultural Labor Relations Board***

ALRB Case No: 33 ALRB No. 6
Court Case No. F054590

This case involved challenges to voter eligibility following an election which was held on March 7, 2006. As a result of two earlier Board decisions (32 ALRB No. 3 and 33 ALRB No. 3), of the original 15 challenged ballots, 3 were overruled and, thus, were opened and counted, and 12 were sustained. The final tally of ballots showed 27 votes for the United Farm Workers of America (UFW) and 25 votes for No Union, thus the UFW was certified as the collective bargaining representative. The Employer then engaged in a technical refusal to bargain with the UFW, precipitating the unfair labor practice complaint that was the subject of decision 33 ALRB No. 6, in order to seek judicial review of the Board's decision at 33 ALRB No. 3.

On January 25, 2008, the Employer filed a petition for writ of review with the Fifth District Court of Appeal requesting that the court set aside the certification of election. Oral argument was held on October 16, 2008. On November 20, 2008, the Court filed an opinion affirming in part, and reversing in part, the Board's decision. (*Artesia Dairy v. Agricultural Labor Relations Board* (2008) 168 Cal.App.4th 598.) The Court reversed the Board's determination as to the owner's three nephews, finding that they were eligible voters because they did not fall within the plainly defined ineligible category of children of the employer set forth in section 20352(b)(5) of the Board's regulations. Therefore, the Court ordered that the ballots of the three nephews be opened and counted. The Court upheld the Board's determinations regarding four other individuals who were found to be ineligible to vote in the representation election. On December 3, 2008, the Board filed a petition for rehearing with the 5th District Court of Appeal requesting that the Court affirm the Board's conclusion that the nephews/foster children were ineligible to vote. On December 16, 2008, the Court issued an order denying the Board's petition for rehearing. On January 20, 2009, the Court issued a remittitur returning jurisdiction over the matter to the Board.

On January 27, 2009 the Board issued Administrative Order 2009-2 ordering that pursuant to the Fifth District Court of Appeal's decision, the ballots of Kevin John Avila II, Kasey John Avila, and Kannen John Avila be opened and counted. On February 4, 2009, the Regional Director opened the three unresolved ballots and issued a revised and final tally with the following results:

UFW	27
No Union	28
Unresolved Challenged Ballots	<u>0</u>
Total	55

As the no union choice received a majority of the valid ballots cast and neither party timely filed objections to the election, the Executive Secretary issued a certification of results of election on February 9, 2009.

***Vincent B. Zaninovich & Sons v.
Agricultural Labor Relations Board***

Court Case No. F055640
ALRB Case No. 06-CE-62-VI
(34 ALRB No. 3)

On December 27, 2007, the Administrative Law Judge (ALJ) issued a decision in which he found that Vincent B. Zaninovich & Sons (Employer) violated section 1153(a) of the Agricultural Labor Relations Act (ALRA) by making threats of discharge and bankruptcy, as well as other threats of job loss, during the course of an election campaign.² The ALJ dismissed an allegation of constructive discharge, finding that the harassment, threats, and other misconduct suffered by the targeted employee did not meet the legal threshold for constructive discharge. The Employer filed exceptions to the ALJ's decision, arguing that the Board should overturn all findings of violations. The United Farm Workers of America (UFW) filed exceptions arguing that the ALJ erred in not finding merit in the constructive discharge allegation.

The Board affirmed the ALJ's findings and conclusions. In light of the findings that supervisors made numerous unlawful threats and harassed union supporters, the Board found it appropriate, in addition to the notice remedies proposed by the ALJ, to require that a separate notice reading be conducted among the Employer's current supervisors and that notices be given to supervisors hired during the ensuing year.

On July 15, 2008, the Employer filed a petition for writ of review of the Board's decision with the Fifth Appellate District. Briefing was completed on November 12, 2008. On June 18, 2009, the Court summarily denied the Petition for Writ of Review. On June 26, 2009, the Employer filed a Petition for Review in the California Supreme Court. On July 29, 2009 the California Supreme Court denied the petition for review. The matter was released for compliance by the ALRB Executive Secretary on August 3, 2009.

² The results of the election were as follows: 425 votes for the UFW, 773 votes for No Union, and 91 Unresolved Challenged Ballots. No election objections were filed, therefore the validity of the election was not at issue.

Regional Office Activity

In fiscal year 2008/2009, one hundred and twenty (120) unfair labor practice (ULP) charges were filed.

Visalia Regional Office:

- Seventy (70) ULP Charges Filed Against Employers
- Seven (7) ULP Charges Filed Against Labor Organizations

Salinas Regional Office:

- Thirty-three (33) ULP Charges Filed Against Employers
- Ten (10) ULP Charges Filed Against Labor Organizations

Overall, the Board settled, dismissed, withdrew or sent to complaint a total of two hundred and twelve (212) charges during fiscal year 2008/2009. The complaints issued or settlements were as follows:

Ten (10) new complaints issued encompassing thirty-two (32) charges.

#	Case No.	Respondent Name	Complaint Date	Comments
1.	07-CE-60-SAL 07-CE-61-SAL	Mushroom Farms, A Division of Spawn Mate, Inc.	07/28/08	Released for Compliance on 7/27/09
2.	07-CE-85-VI 07-CE-87-VI 07-CE-96-VI 07-CE-97-VI 07-CE-102-VI 07-CE-105-VI 2008-CE-017-VIS 2008-CE-020-VIS	Mayflower/Rio Blanco Dairy, a Sole Proprietorship	08/13/08	Settled 12/9/08
3.	2008-CE-026-VIS	Mayflower/Rio Blanco Dairy, a Sole Proprietorship	08/13/08	Settled 1/21/09

#	Case No.	Respondent Name	Complaint Date	Comments
4.	07-CE-37-VI 07-CE-48-VI	Lassen Dairy, Inc., dba Meritage Dairy	10/28/08	Hearing held; Exceptions to ALJ decision filed; pending Board decision
5.	07-CE-17-SAL 07-CE-18-SAL 07-CE-21-SAL 07-CE-22-SAL	The Hess Collection Winery	12/11/08	Pending hearing
6.	2008-CE-074-VIS	HerbThyme Farms, Inc.	12/15/08	Hearing held; Pending ALJ decision
	2009-CE-024-VIS	HerbThyme Farms, Inc.	03/4/09	Consolidated with 2008-CE-074-VIS on 4/3/09.
7.	07-CE-12-SAL 07-CE-68-SAL	D'Arrigo Bros. Co. of California, a California Corporation	02/10/09	Pending hearing
8.	07-CE-28-SAL 07-CE-29-SAL	Frog's Leap Winery	02/11/09	Pending Settlement
9.	07-CE-67-SAL 07-CE-69-SAL	San Martin Mushrooms	02/13/09	Settled
10.	2009-CE-011-VIS 2009-CE-013-VIS 2009-CE-017-VIS 2009-CE-018-VIS 2009-CE-019-VIS 2009-CE-022-VIS 2009-CE-025-VIS	Frank Pinheiro Dairy dba Pinheiro Dairy and Milanesio Farms, a Partnership	04/24/09	Pending hearing

Six (6) hearings were conducted on the following cases:

- Tule River Dairy & P& M Vanderpoel Dairy, 05-CE-49-VI
- Woolf Farming Co. of California, Inc./California Valley Land Company, Inc. dba Woolf Enterprises, 06-CE-28-VI
- Lassen Dairy, Inc., dba Meritage Dairy, 07-CE-37-VI
- HerbThyme Farms, Inc., 2008-CE-074-VIS
- Mushroom Farms, A Division of Spawn Mate, Inc., 07-CE-34-SAL
- Mushroom Farms, A Division of Spawn Mate, Inc., 07-CE-60-SAL

During the fiscal year, thirteen (13) settlements were achieved which overall encompass sixty-three (63) charges; of these settlements five (5) were achieved pre-complaint, seven (7) were achieved at the complaint stage and one (1) was a private party settlement.

Settlements – (Pre-Complaint)

#	Case No.	Respondent Name	Settlement Date
1.	2009-CE-012-VIS	Perez Farm Labor Contracting	02/23/09
2.	2009-CE-040-VIS	C & R Vanderham Dairy, A General Partnership	06/01/09
3.	07-CE-95-VI	Vignolo Farms, Inc.	06/03/09
4.	07-CE-64-VI	Giumarra Vineyards Corporation and Giumarra Farms, Inc.	06/29/09
5.	2008-CL-001-SAL thru 2008-CL-015-SAL, 2008-CL-018-SAL thru 2008-CL-021-SAL (19 total charges)	United Farm Workers of America	07/24/08

Settlements – (Complaint)

#	Case No.	Respondent Name	Settlement Date
1.	07-CE-38-VI	Northstar Dairy, a Sole Proprietorship	10/27/08
2.	07-CE-85-VI 07-CE-87-VI 07-CE-96-VI 07-CE-97-VI 07-CE-102-VI 07-CE-105-VI 2008-CE-017-VIS 2008-CE-020-VIS	Mayflower/Rio Blanco Dairy, a Sole Proprietorship	12/09/08
3.	06-CE-24-VI 06-CE-30-VI 06-CE-49-VI 06-CE-51-VI	Stanley Vander Brink Dairy, a Sole Proprietorship	01/05/09
4.	2008-CE-026-VIS	Mayflower/Rio Blanco Dairy, a Sole Proprietorship	01/21/09
5.	06-CE-78-VI	Kirschenman Enterprises, A California Corporation	02/23/09
6.	07-CE-54-SAL 07-CE-55-SAL 07-CE-57-SAL 07-CE-58-SAL 07-CE-59-SAL	The Hess Collection Winery	10/6/08
7.	07-CE-1-SAL	J. Lohr Vineyards, Inc.	10/15/08

Settlements – (Private Party)

#	Case No.	Respondent Name	Withdrawal Date
1.	07-CE-51-VI thru 07-CE-55-VI, 07-CE-58-VI 07-CE-59-VI 07-CE-60-VI 07-CE-62-VI 07-CE-72-VI 07-CE-103-VI 08-CE-2-VI thru 08-CE-7-VI 08-CE-9-VI 08-CE-10-VI (19 total charges)	Rocking S. Dairy #1 #2 #3	8/25/08

Election Activity

During fiscal year 2008/2009 regional office staff conducted six (6) elections.

Visalia Regional Office - 5 elections

Salinas Regional Office - 1 election

Three (3) hearings were conducted on the following cases:

- HerbThyme Farms, Inc., 2008-RC-006-VIS
- Gallo Vineyards, Inc., 07-RD-1-SAL
- Henry Hibino Farms, 2009-RD-001-SAL

Board Ordered Remedies

In cases where a violation is found, the Board generally orders notice remedies in addition to monetary awards. A notice remedy requires the employer to post, mail and/or read a prepared notice to all agricultural employees so they can become aware of the outcome of the case.

Monetary awards to farm workers in unfair labor practice cases:

The following amounts were paid to workers as a result of findings of liability in unfair labor practice cases or as a result of settlement agreements:

Ninety (90) workers were paid a net sum of \$244,402

Agricultural Employee Relief Fund (Fund or AERF)

The AERF legislation took effect January 1, 2002. The administration of the AERF is governed by California Code of Regulations, title 8, section 20299. The Fund works as follows: where the Board has ordered monetary relief but employees cannot be located for two years after collection of monies on their behalf, those monies will go into the Fund and are distributed to employees in other cases where collection of the full amount owed to them is not possible.

Pursuant to Regulation 20299, allocations are made annually within 90 days of the close of the fiscal year. There was no allocation of money from the AERF in 2008. As of the close of fiscal year 2007-2008, there was no money in the AERF that was available for a 2008 pay out because all of the money in the AERF account had been allocated in the previous two years to claimants who have not been located, and no new funds were eligible for deposit into the AERF during the 2007-2008 fiscal year. Approximately \$22,000 will be available for the 2009 pay out.

Since the inception of the Fund, \$242,339 has been disbursed to those eligible for payouts.