

2008

Report to the Legislature Fiscal Year 2007-2008

Agricultural Labor Relations Board

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Agricultural Labor Relations Board

Report to the Legislature



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GOLDEN GATE UNIVERSITY

Fiscal Year 2007-08

Members of Board

Guadalupe Almaraz, Chairperson¹

Irene Raymundo, Chairperson²

Genevieve A. Shiroma

Cathryn Rivera-Hernandez³

J. Antonio Barbosa, Executive Secretary

Michael Lee, General Counsel

KFC
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A8
2007-08

Date Submitted: September 12, 2008

¹ Appointed January 2008

² November 2005 to December 2007

³ Appointed November 2002; Re-Appointed January 2008

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Introduction

This report is being submitted pursuant to Labor Code § 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 2007/08, the work of the Board and General Counsel continued its recent history of increased activity in most areas including more elections being conducted (12, an increase of 20%) and more unfair labor practice (ULP) charges filed (274, an increase of 72%). The increased election activity caused the Board to mobilize staff from the various regions to ensure that all elections were held timely and without raising issues relating to the election itself. The increased ULP charges caused the General Counsel to initiate a triage program wherein the oldest ULP's were given a higher priority with the ultimate long-term goal of resolving all charges within 180 days of filing. The case workload continues to increase despite the fact the Board settled, dismissed, withdrew or sent to complaint a total of 120 charges during Fiscal Year 07/08. Included among the cases resolved were two major ones: *Hess Collection*, 99-CE-23-SAL (27 ALRB No. 2), which was a compliance case arising out of a technical refusal to bargain, and another, *C. Mondavi & Sons dba Charles Krug*, 06-CE-40 SAL, et al, which was resolved by private settlement with the General Counsel and his staff playing an intricate role in the settlement. The *Hess* case involved 72 workers paid a total of \$282,527.70 in bargaining makewhole, while the *Mondavi & Sons* case involved 26 workers and \$209,000 in backpay.

In addition to the Board's election and ULP investigation work, the Board continues its effort to finalize a new case tracking system. With the goal of having greater ease of compilation of metrics to assist management in making resource and budgetary decisions and to comply with information requests, the ALRB brought online the updated case tracking system, as well as an inventory tracking system. The case tracking system tracks unfair labor practice charges from the time a charge is filed to its final disposition. It tracks all election activity from the time a notice of intention to take access, a notice of intention to organize, or an election petition is filed. It also tracks Agricultural Employee Relief Fund activities and all Mandatory Mediation and Conciliation cases. The inventory tracking system electronically tracks purchase order items which are required to be tagged, such as office furniture, computers, and phones. The ALRB also initiated a project to link staff time tracking with the case tracking system and this work is nearing completion.

While the Board on its own initiative does not propose legislation, nor publicly support or oppose pending legislation, it does track and analyze legislation that proposes to amend the Agricultural Labor Relations Act or otherwise may have an impact on its operations. In this way, the Board is prepared to implement any such legislation should it become law.

Outreach efforts continue to be a major goal of the Board and General Counsel. During this fiscal year, efforts have been underway to form partnerships with other state and federal agencies that also protect the rights of farmworkers. Pending is a Memorandum of Understanding protocol with the Equal Employment Opportunity Commission and a working agreement with the Department of Fair Employment and Housing for the purpose of cross training personnel so they can identify and refer potential violations.

In addition, initial outreach efforts were commenced with the non-Spanish speaking sector of farmworkers by having agency outreach materials translated into Hmong and Punjabi languages.

In the interest of protecting ALRB employees' rights to privacy, 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 2007-08

The Board issued seven decisions in fiscal year 2007-08. The Board took the unusual step of vacating one of its decisions after the parties entered into a global settlement and collective bargaining agreement. A list of decisions with brief summaries follows (the full text of decisions can be found on the ALRB website: www.alrb.ca.gov).

HENRY A. GARCIA DAIRY (2007) 33 ALRB No. 4

This case involves challenges to voter eligibility following a representation election held on March 16, 2007. The Regional Director (RD) impounded six unchallenged ballots pending the resolution of eleven challenged ballots. In his challenged ballot report, the RD recommended that one challenge be overruled, nine be sustained, and one be held in abeyance and set for hearing only if it was outcome determinative. The Board affirmed the RD's conclusions as to eight of the disputed challenges, finding compelling evidence that these individuals were independent contractors and therefore not eligible to vote. The Board found insufficient evidence to determine if a woman who cleaned at the dairy and for the owners of the dairy was an employee or independent contractor. Accordingly, the Board ordered that this challenge set for hearing if it became outcome determinative following the revised tally of ballots.

D'ARRIGO BROS. CO. OF CALIFORNIA (2007) 33 ALRB No. 5

In a previous Board decision, (2006) 32 ALRB No. 1, the Board found that the employer, D'Arrigo Brothers Co. of California violated section 1153(a) and (e) of the Agricultural Labor Relations Act by refusing to furnish information requested for representational purposes by the United Farm Workers of America (UFW), and by engaging in unlawful surface bargaining. In Board decision (2007) 33 ALRB No. 5, the Board vacated decision (2006) 32 ALRB No. 1 at the parties' request after the parties entered into a global settlement and collective bargaining agreement. Contents identical to Board decision (2007) 33 ALRB No. 5 were the subject of Administrative Order No. 2007-06, issued on September 10, 2007. While the administrative order had the same legal effect as this decision, the parties' stipulation to vacate the 32 ALRB No. 1 literally provided for a "reported decision." Therefore, the Board reissued the ruling in the form of decision (2007) 33 ALRB No. 5.

ARTESIA DAIRY, a sole proprietorship (2007) 33 ALRB No. 6

This case involves 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. Consistent with its practice of not relitigating underlying representation decisions in unfair labor practice cases, the Board refused to reconsider its earlier decision and found that the Employer unlawfully refused to bargain with the UFW. The Board rejected the Employer's offer of new

evidence, finding that the proffered evidence was not newly discovered or previously unavailable. Finding that the challenges to three individuals presented novel legal issues requiring a clarification or extension of existing law, the Board determined that the bargaining makewhole remedy was not appropriate in this case.

RICHARD'S GROVE & SARALEE'S VINEYARD, INC. (2007) 33 ALRB No. 7

This case involves objections filed following a decertification election held on July 26, 2007. The tally of ballots showed 39 votes for No Union, 6 votes for the United Farm Workers of America (UFW), and 3 unresolved challenged ballots. The UFW filed an objection following the election alleging that agents of Richard's Grove & Saralee's Vineyard, Inc. (Employer), engaged in misconduct prior to the election that interfered with the free choice of voters. The UFW also filed an unfair labor practice charge alleging that the same conduct constituted a violation of the Agricultural Labor Relations Act (ALRA). On October 4, 2007, the Regional Director dismissed the unfair labor practice charge due to insufficient evidence. On October 23, 2007, the Executive Secretary issued an order dismissing the election objection. Relying on *Mann Packing Co., Inc.* (1989) 15 ALRB No. 11, the Executive Secretary concluded that where, as here, the evaluation of the merit of election objections was dependent on the resolution of issues in a pending unfair labor practice charge, the Board must defer to the exclusive authority of the General Counsel regarding the investigation of charges and the issuance of complaints. The UFW filed a request for review of the Executive Secretary's dismissal with the Board. The Board declined to overrule *Mann Packing Co., Inc.*, as suggested by the UFW, finding that it was settled law. The Board observed that the *Mann Packing* rule reflects a reconciliation of the authority of the General Counsel and the Board that is consistent with both the ALRA and its implementing regulations.

LASSEN DAIRY, INC. (2008) 34 ALRB No. 1

This case involves challenges to voter eligibility following representation election conducted on September 4, 2007. A total of 39 ballots were cast, with 17 votes for the Union (UFCW), 15 votes for "no union," 6 unresolved challenged ballots and 1 voided ballot. The Regional Director (RD) issued a Challenged Ballot Report recommending that that the challenges to 3 ballots be sustained, that 2 challenges be held in abeyance pending the resolution of related ULP charges, and that 1 ballot be set for hearing should it become outcome determinative.

The Board sustained the challenge to the ballot of the son of a trustee of a family trust which is the majority stockholder in the Dairy and found the son was ineligible to vote under Board regulation section 20352(b)(5). The Board set for hearing the challenges to two individuals who are the employees of a neighboring farm. The Board ordered the hearing examiner to take evidence on whether the farm, the Dairy and a related business that provides payroll services and equipment to the Dairy and farm constituted a single employer for collective bargaining purposes. The Board affirmed the RD's recommendation to set for hearing the challenged ballot of an individual alleged to be a statutory supervisor. The Board also affirmed the RD's recommendation to hold the challenged ballots of two individuals in abeyance pending the General Counsel's resolution of related ULP charges.

AUKEMAN FARMS (2008) 34 ALRB No. 2

This case involves an unlawful discharge of a single employee. Following an evidentiary hearing, the Administrative Law Judge (ALJ) found that Aukeman Farms (Employer) violated section 1153(a) of the Act by discharging a dairy worker for engaging in protected concerted activity. The employee had concertedly complained about broken ventilation fans and uncomfortable conditions in the milk barn where he and fellow milkers were working. The ALJ found that the Employer's proffered reason for the discharge—that the employee had over extended his vacation—was a pretext. The Board affirmed the ALJ's decision and rejected the Employer's argument that the heat and lack of air circulation in the barn was not a "protected working condition" because it was based on the workers' subjective perception of uncomfortable conditions. The Board noted that it is well-settled that the reasonableness of employees' complaints is irrelevant to whether their conduct is protected concerted activity. The Board found that the record supported a finding that the employee's discharge was unlawfully motivated. The Employer's inconsistent, shifting explanation for the discharge, the fabricated warning given to the employee, and the severity of discipline were among the factors that provided support for an inference of unlawful motive.

VINCENT B. ZANINOVICH & SONS (2008) 34 ALRB No. 3

Following an evidentiary hearing, the Administrative Law Judge (ALJ) 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. 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 Board affirmed the ALJ's findings and conclusions. With regard to the allegation of constructive discharge, the Board found that the harassment and threats directed at the employee in question were due to his union involvement and may have been intended to cause him to quit. However, in light of the strict standard for such claims, the Board concluded that at the time the employee left work the adverse conditions he faced had not yet reached the legal threshold for constructive discharge. 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. (Note: 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.)

Board Administrative Orders

2007-05	D'Arrigo Bros. Co. Of California	2007-MMC-01	7/6/07	Order Holding Mandatory Mediation Proceedings In Abeyance
2007-06	D'Arrigo Bros. Co. Of California	00-CE-5-SAL	9/10/07	Order Vacating Board Decision 32 ALRB No.1
2008-01	Mayflower Dairy/ Rio Blanco Dairy	07-RC-7-VI	3/7/08	Order Denying Request For Review of Executive Secretary's Order Denying Motion To Dismiss Election Objections
2008-02	Aukeman Farms	06-CE-35-VI	4/3/08	Order Regarding General Counsel's Motion To Request Time To File An Amended Backpay Specification
2008-03	Aukeman Farms	06-CE-35-VI	4/18/08	Order Setting Time To File Response To General Counsel's Motion To Amend Backpay Specification
2008-04	Aukeman Farms	06-CE-35-VI	5/6/08	Order Granting General Counsel's Motion To Amend Backpay Specification; Order Setting Time To File Answer To Amended Backpay Specification

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 action in both state and federal courts.

A list of cases on the Board's litigation docket for fiscal year 2007/08 and summaries of those cases are provided below.

***D'Arrigo Bros. Co. of California v.
Agricultural Labor Relations Board***

ALRB Case No. 32 ALRB No.1
Court Case No: D048904

This case involved allegations of surface bargaining and of a failure to provide information requested by the certified bargaining representative. On May 31, 2006 the

Board issued a decision finding that D'Arrigo Bros. Co. had violated the Agricultural Labor Relations Act (ALRA) by failing or delaying to respond to information requests made by the certified bargaining representative, the United Farm Workers of America, AFL-CIO (UFW). The Board also found that D'Arrigo had engaged in unlawful surface bargaining. In evaluating the totality of D'Arrigo's conduct, the Board found that the record supported the conclusion that D'Arrigo's bargaining representatives had engaged in a pattern of behavior that was inconsistent with a good faith effort to reach agreement. The Board ordered a makewhole remedy to compensate employees for the delays in obtaining the benefits of collective bargaining caused by the employer's failure to bargain in good faith. (32 ALRB No. 1).

D'Arrigo filed a petition for writ of review on June 29, 2006 with the Court of Appeal (4th Appellate District, Division One). As part of a proposed global settlement to resolve all pending disputes between the parties reached during the mandatory mediation process, the parties asked the Board to agree to a stipulation to have the appeal dismissed and the case remanded to the Board for the purpose of vacating the Board's decision. The Board agreed to the stipulated dismissal and remand for the purpose of vacating the decision in consideration of the global settlement agreement. On September 5, 2007, the court approved the stipulated dismissal, dismissed the case, and remanded it to the Board for the purpose of vacating its decision pursuant to the settlement agreement. On September 10, 2007, the Board issued an administrative order vacating decision No. 32 ALRB No.1.

*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 5th District Court of Appeal requesting that the court set aside the certification of election. The Employer filed its opening brief in support of its petition on March 13, 2008. The Board filed its brief in opposition to the petition on April 16, 2008. The Employer filed its reply brief on May 12, 2008. Briefing in this matter is now complete. The matter is now awaiting oral argument or a ruling by the court.

Regional Office Activity

In fiscal year 2007/2008, two hundred seventy four (274) unfair labor practice charges were filed.

Visalia – 127 ULP Charges

Salinas – 147 ULP Charges

Overall, the Board settled, dismissed, withdrew or sent to complaint a total of 120 charges during fiscal year 2007/2008. The complaints issued or settlements were as follows:

Nine (9) new complaints issued encompassing nineteen (19) charges.

#	Case No.	Respondent Name	Complaint Date	Comments
1.	06-CE-28-VI	Woolf Farming Co.	7/2/07	Hearing held; Pending ALJ decision
2.	05-CE-49-VI 05-CE-51-VI	Tule River Dairy	11/27/07	Pending hearing
3.	06-CE-24-VI 06-CE-30-VI 06-CE-49-VI 06-CE-51-VI	Stanley Vanden Brink Dairy	1/14/08 1/14/08 11/27/07 11/27/07	06-CE-49-VI was consolidated under 06-CE-24-VI on 4/28/08; Pending hearing
4.	06-CE-78-VI	Kirschenman Enterprises	2/8/08	Pending hearing
5.	07-CE-38-VI	Northstar Dairy	5/23/08	Pending hearing
	06-CE-51-SAL 06-CE-52-SAL	C. Mondavi & Sons	12/24/07	Consolidated under 06-CE-40-SAL; Pending hearing
6.	07-CE-1-SAL	J. Lohr Vineyards, Inc.	2/8/08	Pending hearing
7.	07-CL-1-SAL	UFW (Monterey Mushrooms)	2/21/08	Pending hearing
8.	07-CE-54-SAL 07-CE-55-SAL 07-CE-57-SAL 07-CE-58-SAL 07-CE-59-SAL	The Hess Collection Winery	5/23/08	Pending hearing
9.	07-CE-34-SAL	Mushroom Farms	5/29/08	Pending hearing

Two (2) hearings were conducted on the following cases:

- 06-CE-62-VI - Vincent B. Zaninovich & Sons
- 06-CE-35-VI - Aukeman Farms

During the fiscal year, eighteen (18) settlements were achieved which overall encompass thirty-one (31) charges; of these settlements eight (8) were achieved pre-complaint, four (4) were achieved at the complaint stage and six (6) were private party settlements.

Settlements – (Pre-Complaint)

#	Case No.	Respondent Name	Settlement Date
1.	07-CE-13-VI	Grimaud Farms of California	4/8/08
2.	07-CE-1-VI 07-CE-2-VI 07-CE-3-VI	Yagi Brothers Produce, Inc.	4/29/08
3.	2008-CE-013-VIS	Braden Farms, Inc.	6/2/08
4.	07-CE-24-SAL	Gallo Vineyards, Inc.	2/5/08
5.	06-CL-8-SAL	UFW	2/8/08
6.	06-CL-12-SAL	UFW	2/8/08
7.	07-CE-6-SAL	Major Farms, Inc.	5/13/08
8.	07-CE-13-SAL	Premium Packing, Inc.	6/3/08

Settlements – (Complaint)

#	Case No.	Respondent Name	Settlement Date
1.	05-CE-35-VI 05-CE-36-VI	Aguiar Dairy	7/30/07
2.	06-CE-57-VI	Bos Farms	1/3/08
3.	07-CE-22-VI	Santa Rosa Berry Farms, LLC	5/15/08
4.	06-CE-1-SAL	Pacific Coast Mushrooms, LLC	2/27/08

Settlements – (Private Party)

#	Case No.	Respondent Name	Withdrawn Date
1.	07-CE-4-VI	James & John Jongsma Dairy	4/14/08
2.	2008-CE-003-SAL	Pete Marchi and Son Farms, Inc.	3/17/08
3.	2008-CE-004-SAL	Pete Marchi and Son Farms, Inc.	3/17/08
4.	06-CE-67-SAL	Jack Neal & Son	4/7/08
5.	06-CE-40-SAL et al (11 Charges)	C. Mondavi & Sons, dba Charles Krug	4/8/08
6.	07-CE-4-SAL	The Growers Company, Inc.	4/23/08



Election Activity

During fiscal year 2007/2008 regional office staff conducted twelve (12) elections.

Visalia - 10 elections

Salinas - 2 elections

Two (2) hearings were conducted in the following cases:

- 07-RD-3-VI – Jim Nace Dairy
- 07-RC-4-VI – Lassen Dairy, Inc.

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:

Eighty-two (82) workers were paid a net sum of \$176,087.00⁴

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.

Since its inception, \$264,485 has been transferred into the AERF, and \$241,502 has been disbursed to those eligible for payouts. The allocation is made annually, within 90 days of the close of the fiscal year. All eligible claimants are given a pro rata share of the monies available. The 2007 allocation was made on August 2, 2007. \$25,065 was available to distribute to 12 newly eligible claimants and to the 232 claimants from the previous year who were in their final year of eligibility. This represented 3.89% of their total claims.

⁴ Excludes Hess Collection case, as payouts did not begin until the 08/09 FY.