

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

May 26, 2004

Time: 10:00 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez, Zingale and Bustamante
Members Absent: None
Staff Present: Board Counsel Wender and Heyck; Executive Secretary Barbosa, Analyst Massie
Staff Absent: Board Counsel Murray
Others: Cynthia Thornton, Chair CUIAB; Yaron Partovi, Legal Intern

OPEN SESSION

- 1. Approval of Minutes:** Board minutes for May 14, 2004 were approved 4-0.
- 2. Board Member Comments:** Chairwoman Shiroma welcomed Cynthia Thornton, Chair of the Unemployment Insurance Appeals Board. Member Rivera-Hernandez introduced Yaron Partovi, a legal intern who will commence a summer legal internship with the Board on June 1st. Chairwoman Shiroma was a panelist at the May 20, 2004 meeting of the Industrial Relations Association of Northern California and reported on the meeting. The topic was "The History and Current and Future of Private and Public Sector Labor Law."
- 3. Public Comments:** None.
- 4. Announcements:**

The California Agriculture: Dimension and Issues Conference is scheduled for May 28, 2004, at the Red Lion Inn Sacramento from 7:45 a.m. to 4:45 p.m.

Monday, May 31, 2004 is a State holiday (Memorial Day).

5. Weekly Status Report On Elections, Unfair Labor Practice Complaints, Hearings And Court Litigation

ELECTION REPORT

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

Nothing new to report.

PENDING ELECTION MATTERS:

Gallo Vineyards, Inc., 03-RD-1-SAL

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received March 29, 2004. A decision by the Board is pending.

Excelsior Farming, LLC, 04-RD-1-VI

A decertification election was held on April 27, 2004 among the employees of Excelsior Farming, LLC in Hanford, CA. The certified bargaining agent of the employer is the UFW (United Farmworkers of America, AFL-CIO). According to the petition for decertification filed on April 20, 2004 with the ALRB Visalia Regional Office, there are approximately 360 employees in the bargaining unit. There is no tally of ballots at this time because the ballots were impounded following the election, and are pending investigation of a charge filed by the UFW alleging employer involvement with the decertification effort. On May 17, 2004 the Regional Director dismissed charge number 04-CE-16-VI as there was insufficient evidence to support a prima facie showing of a violation of the Act based on employer initiation of or unlawful assistance to the decertification drive. The UFW has ten days to see review of this dismissal.

The UFW filed its objection petition on May 4, 2004. On May 6th, the Employer requested that the UFW's petition be dismissed for failure to comply with the regulations as the union allegedly failed to submit declarations in support and its factual statement was inadequate. The matter is in abeyance pending completion of the ULP investigation.

COMPLAINT REPORTS

Nothing new to report.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Nothing new to report.

FIVE CASES ON CALENDAR:

Cocopah Nurseries, Inc., 03-CE-4-EC

The pre-hearing conference is set for June 1, 2004. The hearing is set for June 15, 2004.

Milky Way Dairy, 02-CE-44-VI

The pre-hearing conference was held on May 4, 2004. The hearing is set for June 21, 2004.

D'Arrigo Bros. Co., 03-CE-5-SAL

The second pre-hearing conference on discovery was held May 11, 2004. The hearing is set for July 20, 2004.

UFW (Coastal Berry), 01-CL-3-EC

The pre-hearing conference is set for July 12, 2004. The hearing is set for July 26, 2004.

Hadley's Date Gardens, Inc., 03-CE-15-EC

The pre-hearing conference is set for October 5, 2004. The hearing is set for October 19, 2004.

CASES PENDING ALJ DECISION:

Nothing new to report.

ALJ/IHE DECISIONS ISSUED:

Nothing new to report.

CASE PENDING EXCEPTIONS AND/OR REPLY:

Gallo Vineyards, Inc., 03-CE-9-SAL

The ALJ issued her decision on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received by March 26, 2004. A decision by the Board is pending.

CASES SETTLED OR RESOLVED:

Nothing new to report.

COMPLIANCE CASES CLOSED:

Nothing new to report.

CASES TRANSFERRED TO BOARD FOR DECISION:

Nothing new to report.

BOARD DECISIONS:

Nothing new to report.

REQUESTS UNDER MANDATORY MEDIATION AND CONCILIATION LAW:

Hess Collection Winery, Request for Mediation, 2003-MMC-01:

In *Hess Collection Winery* (2003) 29 ALRB No. 6, the Board issued its first decision under the new mandatory mediation and conciliation law, denying the Hess Collection Winery's (Employer) petition for review of the mediator's report imposing final terms of a collective bargaining agreement. The Employer requested that the Board vacate and set aside the mediator's report for a variety of reasons. The Board found no basis for accepting review of the mediator's report and denied the Employer's petition in full. On November 14, 2003, the Employer filed a petition for a writ of review in the Court of Appeal, Third Appellate District pursuant to Labor Code section 1164 seeking review of the Board's Order and Decision in Hess Collection Winery. The certified record was filed with the court on November 24, 2003. On November 24, 2003, the court requested the parties provide supplemental briefing regarding the petitioner's stay request. The petitioner's supplemental letter brief addressing legal authority for, and the appropriateness of the stay was filed December 1, 2003. On December 11, 2003, the parties filed a stipulation to stay the Board's decision pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. The Board's response brief was filed January 22, 2004. Hess' reply brief is due March 3, 2004. On February 4, 2004, the court granted the UFW's request to file an amicus brief, and accepted the brief filed with the request. On February 19, 2004, the court issued a writ of review, directing the ALRB and the real party in interest (UFCW) to file returns (responses) by March 10, with Hess' replication (reply) due 10 days thereafter. Originally, the court treated the case as if it was governed by Rule 59 of the CA Rules of Court, which governs the procedures for review of final Board orders in unfair labor practice cases. Section 1164.9 of the MMC statute speaks of court review of Board orders fixing a contract in more traditional writ of review terms. The new filings required by the writ of review will essentially reiterate or incorporate by reference the earlier briefs. Western Growers Association filed an amicus curiae brief on March 8, 2004. The ALRB's return was filed on March 10, 2004. The matter is now fully briefed and pending decision by the court.

COURT LITIGATION:

Western Growers Association, et al., 03AS00987

On August 22, 2003, the plaintiffs filed a petition for writ of mandate in the Court of Appeal, Third Appellate District, seeking to overturn a ruling by the Superior Court that the matter is not yet ripe for adjudication. The Superior Court ruled that the

matter would not be ripe until the Board issues a decision fixing the terms of a collective bargaining agreement. This lawsuit, which challenges the constitutionality of the new mandatory mediation and conciliation law (SB 1156 and AB 2596, codified as Labor Code sections 1164 to 1164.14), was filed on February 24, 2002 in the Sacramento County Superior Court. On November 20, 2003, the 3rd DCA issued an order summarily dismissing the petition for writ of mandate in the WGA case. The plaintiffs have filed an amended complaint in the Sacramento County Superior Court. The court has taken plaintiff's motion for a preliminary injunction off calendar pending the DCA ruling in the related case of The Hess Collection Winery, C045405. On December 22, 2003, a demurrer and request for a stay of the matter pending the resolution of a related case (Hess) was filed on behalf of the Board. A hearing on the demurrer and request for stay is scheduled for February 19, 2004. On February 6, 2004 WGA filed its memorandum of points and authorities in opposition to the ALRB's (and the intervenors') motion to stay proceedings and demurrer. On February 18, 2004, the superior court issued a tentative ruling granting the request for a stay, which became final when no party requested to appear at the scheduled hearing by the 4:00 p.m. deadline. Absent an effort seeking a writ in the Court of Appeal to overturn the superior court's ruling (there is no indication that such an effort is planned), further action on this case will await resolution of the Hess Collection Winery v. ALRB case.

The Hess Collection Winery, C045405

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6. Budget And Administration

- (a) Information Technology: The replacement backup tape drive for the Sacramento server has been received and will be installed on Thursday. Analyst Massie is troubleshooting other minor problems.
- (b) Regulations: Agricultural Employee Relief Fund/Administration of the Fund-Regulation took effect May 19, 2004. The Board discussed the implementation of the regulation.
- (c) Budget – Executive Secretary Barbosa is working in conjunction with EDD and Labor Agency staff to seek renewal of agency contracts.
- (d) Policy and Procedures Committee:
 - (1) Procurement Policy (Draft) – ALRB has received a draft procurement policy from EDD that needs to be revised for our purposes.
- (e) Labor and Workforce Development Agency:
 - (1) Case Tracking System: Executive Secretary Barbosa, Analyst Massie and Administrative Assistant Justice are meeting with EDD staff on a regular basis re the case tracking system. Section violations codes will be explained and new tracking procedures are being devised to track mandatory mediation, impoundment and blocked election cases. The Board also needs to discuss the need to track compliance, settlements and monetary awards. EDD has been unable to locate the institutional data in Jim Winston's computer though these efforts continue.
- (f) Annual Report 2002/03 – Executive Secretary Barbosa reported that work continues on the report and he will work with Analyst Massie on the Petition to Certification Chart.
- (g) Regulating Farm Labor Relations: The ALRA at 30 – The Board discussed possible dates (September 30-October 1, 2004; October 8-9; or October 14-15) for the conference and various sources of funding. Professor Martin indicated that William Gould would prefer September 30-October 1. The Board would like to hold the conference October 14-15. The Board will contact Professor Martin and arrange a meeting next week to discuss the conference.

7. Outreach Projects

- (a) Novella: Work continues on obtaining funding for printing.
- (b) Brochures: Board Counsel Wender has completed his review of the latest version of the ALRB Handbook (bluebook) with necessary revisions.

8. Legislation: AB 2900 (Laird)

Presently, Labor Code section 1156.3, subdivision (e), requires that the Board decertify a labor organization if it has been found by the EEOC to have discriminated on the basis of race, color, national origin, religion, sex, or other arbitrary or invidious classification in violation of Title 42 of the U.S. Code. This bill would add as a basis for decertification a finding by the California Dept. of Fair Employment and Housing that a labor organization has engaged in discrimination on any basis listed in Government Code section 12940, subdivision (a) (race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, or sexual orientation). The bill also makes nonsubstantive changes to other provisions of section 1156.3. On April 26, 2004 the bill passed out of the Committee on Labor and Employment, and was re-referred to the Committee on Appropriations. On May 6, 2004, the bill passed out of the Committee on Appropriations, and on May 10, 2004, the bill was read for the second time in the Assembly. On May 17, 2004, the bill was read for a third time in the Assembly and passed on to the Senate. On May 18, 2004, the bill was read for the first time in the Senate and was sent to the Rules Committee for assignment.

- 9. Personnel:** Summer Law Student Interns Yaron Partovi and Erich Shiners are scheduled to start work on June 1, 2004. Member Zingale will work with Personnel Analyst Kojima on the job announcement for a Board secretary position.

- 10. Compliance:** Nothing new to report.

11. Future Agenda Review:

- (a) Press Release Policy
- (b) Electronic Filing of Documents Policy

The public meeting adjourned at 11:30 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.