

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 29, 2004

Time: 9:30 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez, Bustamante (telephone conference) and Zingale
Members Absent: None
Staff Present: Board Counsel Heyck, Wender and Murray; Executive Secretary Barbosa; Analyst Massie
Staff Absent:
Others:

OPEN SESSION

- 1. Approval of Minutes:** Minutes for September 23, 2004, were approved 4-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**
The Bilingual Services Implementation Plan is due October 1, 2004. The annual United Way campaign begins October 1, 2004. The annual Making Strides Against Breast Cancer Walk in Sacramento will be held on Sunday, October 24, 2004.
- 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): None.

PENDING ELECTION MATTERS:

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

The ALJ issued her decision on the unfair labor practice case on December 19, 2003. Both the union and employer filed exceptions to her decision. Replies were received March 29, 2004. The Board notified all interested parties of an opportunity for written and oral argument on a specified legal issue relevant to the Gallo ULP matter. Written comments were received on August 2, 2004. Oral argument was held on September 10, 2004. A decision by the Board is pending.

Green Nature Growers, Inc dba Old River Sod, 04-RD-2-VI

On September 17, 2004 agricultural employee Tracy Thornhill filed a decertification petition with the Visalia Regional Office seeking an election to oust the incumbent union United Farm Workers of America, AFL-CIO. The employer, Green Nature Growers, Inc dba Old River Sod, is located in Bakersfield, grows and harvests sod (grass) for market and employs approximately 21 employees. An election was held on Friday September 24, 2004 with the following tally of ballots reported by the Visalia regional office staff:

| | |
|-----------|----|
| UFW: | 8 |
| No Union: | 11 |
| UCB's: | 8 |
| Total: | 27 |

The unresolved challenged ballots are outcome determinative so the Regional Director will conduct an investigation. Election objections, if any, are due October 1, 2004.

COMPLAINT REPORTS

Nothing new to report.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Two prehearing conferences scheduled next week: Hadley's Date Gardens, Inc., 03-CE-15-EC and McCaffrey Roses, 00-CE-92-VI.

FOUR CASES ON CALENDAR:

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.

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

The ALJ issued a notice scheduling a prehearing conference for October 5, 2004 with the hearing to follow on November 2, 2004.

McCaffrey Roses, 00-CE-92-VI

The pre-hearing conference is set for October 4, 2004. The hearing is set for December 2, 2004.

Hess Collection Winery, 01-CE-09-SAL

The pre-hearing conference is set for November 23, 2004. The hearing is set for January 11, 2005.

CASES PENDING ALJ DECISION:

Aurora Farms dba Borba & Son Dairy, 03-CE-18-EC

The ALJ decision is expected to issue this week.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES PENDING BOARD DECISION:

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. The Board has notified all interested parties of an opportunity for written and oral argument on a specified legal issue relevant to the Gallo ULP matter. Written comment was due on August 2, 2004. On September 8, 2004, the Executive Secretary issued an Order Setting Deadline for Opposition to Respondent's Motion to Reopen the Record. Oral argument was held on September 10, 2004. The board decision is pending.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

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 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. On May 25, the court issued an order asking for supplemental letter briefing related to whether the mandatory mediation process involves the delegation of legislative authority and whether such a delegation is valid. The deadline for the Petitioner (Hess) (and amici in support) to file its brief was June 11, 2004. Both Hess and WGA filed letter briefs on June 11. The ALRB's brief was filed June 28, 2004. Any reply brief by the Petitioner was due July 8, 2004.

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

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 on November 24, 2003. On November 24, 2003 the court requested the parties provide supplemental briefing regarding the petitioner's stay request. On December 11, 2003, the parties filed a stipulation staying the Board's order pending resolution of the appeal. Petitioner's opening brief was filed with the court on December 23, 2003. 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

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D'Arrigo Bros. Co. of California, Case No 71328 (00-CE-5-SAL et al)

On September 17, 2004 D'Arrigo Bros. Co. of California filed its opposition to application for order enforcing notice in lieu of subpoena and order to show cause. On October 1, 2004 at 9:00 a.m. the Superior Court of Monterey County will hear the Application for Order Enforcing Notice in Lieu of subpoena and Order to Show Cause. Laura Heyck will appear and represent the Board.

6. Budget And Administration

(a) Information Technology: CapData has been informed of the unusual length of time to log on.

(b) Regulations: Agricultural Employee Relief Fund/Administration of the Fund – Nothing new.

(b) Budget: Nothing new.

(c) Policy and Procedures Committee: Board Governance Policy – Review continues.

(d) Labor and Workforce Development Agency

EDD Internal Audit – Accounting Officer Davis reported on the status of the EDD audit.

Senior Staff Meeting – The Senior Staff meeting was held September 27, 2004. Chairwoman Shiroma reviewed the highlights.

(e) Regulating Farm Labor Relations: The ALRA at 30 – The conference will be held tomorrow, September 30, 2004. Outreach materials will be available to participants.

- (f) California Performance Review – There will be a telephone conference between the ALRB and the Labor Agency regarding CPR on September 30, 2004 at 11:00 a.m.
- (g) Regional Directors’ Quarterly Meeting – Update – All regional directors have indicated that they are available on November 16, 2004 for the next Regional Directors’ quarterly meeting. RD’s Alderete and Capuyan will be participating via telephone conference.

7. Outreach Projects

- (a) Novella: Nothing new.
- (b) Brochures: Nothing new.

8. Legislation:

AB2900 (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. The bill was referred to the Senate Judiciary Committee on May 27, 2004. A hearing on the matter was held June 22, 2004. On June 23, 2004, the bill passed out of the Senate Judiciary Committee and was re-referred to the Senate Appropriations Committee. On August 5, 2004, the bill passed out of the Senate Appropriations Committee. On August 9, 2004, the bill was read for the second time. On August 16, 2004, the bill was read for the third time, passed the Senate, and was sent to the Assembly for enrollment. On August 26, 2004, the bill was enrolled and sent to the Governor. The bill was signed by the Governor on September 24, 2004.

9. Personnel: Nothing new to report.

10. Compliance: Nothing new to report.

11. Future Agenda Review:

The open session ended at 10:20 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.