

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

October 27, 2004

Time: 9:40 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez, Zingale and Bustamante
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 October 20, 2004, were approved 4-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

Former Senator and ALRB Chairman Alfred Song passed away October 11, 2004, in Irvine, California, at the age of 85.

Mauricio Nuno has been invited by the EEOC to give a presentation on the ALRA and ALRB to the EEOC staff in the Los Angeles office.

The 2004 NLRB Conference on Labor and Employment Law will be held in San Francisco on November 5, 2004, at the Crowne Plaza Hotel – Union Square.

- 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. A decision by the Board is pending.

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

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 at Green Nature Growers, Inc. dba Old River Sod. A decertification election was held on Friday September 24, 2004 at Old River Sod with the following tally of ballots reported by the Visalia regional office staff:

| | |
|-----------|----------|
| UFW: | 8 |
| No Union: | 11 |
| UCB's: | <u>8</u> |
| Total: | 27 |

The unresolved challenged ballots are outcome determinative so the Regional Director will conduct an investigation. The regional director's challenged ballot report is pending. The UFW filed objections to the election with the Executive Secretary on October 1, 2004.

COMPLAINT REPORTS

Two new complaints have issued:

United Farm Workers of America, 04-CL-1-VI, et al. (Pictsweet Mushrooms)

The complaint alleged that the respondent union failed and refused to inform unit members that they have a right to object to the payment of monies to, and expenditure of monies by, the union for purposes other than collective bargaining, contract administration and grievance adjustment; and failed to provide unit members a proper opportunity to object to and challenge the amount of union dues.

Sierra Packing Company, Inc., 04-CE-14-EC

The complaint alleged that the employer unlawfully discharged an agricultural employee because the worker engaged in protected concerted activity and/or because he previously filed an unfair labor practice charge against the employer.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Nothing new to report.

THREE CASES ON CALENDAR:

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

The pre-hearing conference was held October 5, 2004. The hearing is scheduled to begin November 2, 2004.

McCaffrey Roses, 00-CE-92-VI

The pre-hearing conference was held 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, 2004.

CASES PENDING ALJ DECISION:

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

The hearing closed on October 19, 2004. The matter is pending receipt of transcripts and post-hearing briefs.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

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

The ALJ decision issued on September 30, 2004.

Exceptions are due October 25, 2004.

Reply briefs are due November 8, 2004.

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 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. 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. Both Hess and WGA filed letter briefs on June 11. The ALRB's brief was filed June 28, 2004. Petitioner's reply brief was due July 8, 2004.

ALRB v. D'Arrigo Bros, Case No. M 71328

Board Counsel Heyck appeared on behalf of the Board at an OSC hearing in the Superior Court of Monterey County on Friday, October 1, 2004. The court approved the Board's application for an order enforcing the UFW's notice in lieu of subpoena, but it did so on the condition that the negotiation notes and correspondence requested in the UFW's notice in lieu of subpoena not be disseminated or used outside the scope of ALRB Case No. 00-CE-5-SAL, et al.

Ms. Heyck prepared a formal order after hearing, and sent it to counsel for D'Arrigo for approval as conforming to the court's order as required by California Rule of Court 391. The proposed order was submitted to the court for signature on October 13, 2004. We are waiting for receipt of the signed order from the court.

6. Budget And Administration

(a) Information Technology: No new report.

(b) Regulations: Agricultural Employee Relief Fund/Administration of the Fund – Accounting Officer Davis will work with Controller’s Office to set up the new trust account as time permits.

(c) Budget: No new report.

(d) Policy and Procedures Committee: Nothing new to report.

(e) Labor and Workforce Development Agency

EDD Internal Audit – The audit is ongoing.

7. Outreach Projects

(a) Novella: Nothing new.

(b) Brochures: The brochures for the Farmworker breakfast in El Centro will be sent out this week.

(c) ALRB Handbook – Proposed Revisions—Board Members will submit approvals or any changes to the proposed revision so that they may be sent out for an official translation into Spanish. Printing will await sufficient funding.

8. Legislation: Nothing new to report.

9. Personnel: Nothing new to report.

10. Compliance: The tomato cases compliance report is expected to issue shortly.

11. Future Agenda Review: The Board rescheduled regularly scheduled Wednesday meetings to the following dates: Thursday, November 4, 2004, at 10:00 a.m.; Tuesday, November 9, 2004 at 10:00 a.m.; and Tuesday, November 23, 2004 at 10:00 a.m.

The open session ended at 10:40 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.