

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 23, 2004

Time: 10:05 a.m.
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez,
Bustamante and Zingale
Staff Present: Board Counsel Heyck, Wender and Murray; Executive Secretary
Barbosa; and Analyst Massie
Staff Absent: Executive Secretary Barbosa

OPEN SESSION

1. Approval of Minutes: Minutes for November 9, 2004 were approved 3-0.

2. Board Member Comments: None

3. Public Comments: None.

4. Announcements:

The 25th Annual EDD Farmworker Appreciation Breakfast will be held at the
Calexico One Stop on December 10, 2004, from 2:30 a.m. to 6:00 a.m.

**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. The Board issued its decision on November 5, 2004. The parties have 30 days to file a petition for review with the court of appeals. On November 3, 2004 the respondent filed its motion to disqualify Board Member Zingale and all other Board members who have engaged in any other business, vocation or employment from participating in, deliberating or ruling on the Gallo case and for removal from the Board. On November 5, 2004 the Board denied the motion in Admin. Order No. 2004-10. On November 10, 2004, General Counsel Turner filed a request for clarification of the extent of Board member Rivera-Hernandez' participation in the Gallo case. The election objections will remain in abeyance pending completion of the ULP proceeding.

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

On October 29, 2004 the Regional Director issued his report on challenged ballots and recommended that of the eight (8) unresolved challenged ballots, six (6) be opened and counted, one (1) be sustained, and one remain unresolved and not be opened and counted. Exceptions, if any, are due within five (5) days receipt of the report. None have been filed. The Executive Secretary issued an order making the regional director's report final and ordered the opening and counting of the ballots. The regional director will open and count the ballots on December 7, 2004. The UFW filed objections to the election with the Executive Secretary on November 5, 2004 that are in abeyance pending conclusion of the challenged ballot proceeding and completion of various pending overlapping ULPs.

COMPLAINT REPORTS

One new complaint has issued:

Norman's Nursery, Inc., 03-CE-26-EC(R)

The employer allegedly reduced workers' hours and constructively discharged various

employees because they engaged protected concerted activity.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Nothing new to report.

THREE CASES ON CALENDAR:

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.

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

The pre-hearing conference was held October 5, 2004. The hearing is set for January 18, 2005.

CASES PENDING ALJ DECISION:

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

The hearing closed on October 19, 2004. The post-hearing briefs are due on November 29, 2004.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS AND/OR REPLY:

None.

CASES PENDING BOARD DECISION:

None.

CASES SETTLED OR RESOLVED:

None.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

None.

BOARD DECISIONS:

None.

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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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. The court inadvertently signed two conflicting orders after hearing, and when this was brought to the court's attention, the court issued an order setting both orders after hearing aside. The court set a hearing for December 3, 2004 at 9:00 a.m. to address the issues of the two conflicting orders.

6. Budget And Administration

- (a) Information Technology: Analyst Massie reported on the California Information Technology CIO Summit. CapData has been informed of the storm-related IT problems at the El Centro Regional office. Business Services Officer McCarther will check on available cell phone plans and replacement of postage meters. Analyst Massie will obtain specifications for conference telephone.
- (b) Regulations: General Counsel Turner proposed changes. Board Counsel Wender will follow up with General Counsel Turner to alert her that the Board requires justification before being able to assess.
- (c) Budget: Nothing new to report.
- (d) Policy and Procedures Committee: Nothing new to report.

(e) Labor and Workforce Development Agency

EDD Internal Audit – Nothing new to report.

7. Outreach Projects

(a) Novella: Business Services Officer McCarther is proceeding with the reproduction of the Novella.

(b) Brochures: Nothing new to report.

(c) ALRB Handbook – Proposed Revisions—Regional Directors’ responses to proposed revisions are due December 3, 2004.

8. Legislation: Nothing new to report.

9. Personnel: Nothing new to report.

10. Compliance: Nothing new to report.

11. Future Agenda Review: Nothing new to report.

The open session ended at 11:00 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.