

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

**Board Conference Room  
915 Capitol Mall, 3<sup>rd</sup> Floor  
Sacramento, CA 95814**

**May 4, 2005**

Time: 10:00 a.m.  
Members Present: Chairwoman Shiroma, Board Members Rivera-Hernandez and Zingale.  
Members Absent: None.  
Staff Present: Executive Secretary Barbosa, Board Counsel Wender and Murray; Analyst Massie  
Staff Absent: Board Counsel Heyck

**OPEN SESSION**

- 1. Approval of Minutes:** Minutes for April 27 and 28, 2005, were approved 3-0.
- 2. Board Member Comments:**
- 3. Public Comments:** None.
- 4. Announcements:**

ALRB Field Examiner Mauricio Nuno is the monthly speaker for the May 4, 2005 Farm Worker Services Coalition of Imperial County meeting which is being held in Calexico today.

ALRB Board Member Cathryn Rivera-Hernandez was elected Vice-President of the Sacramento's La Raza Lawyers Association.

- 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, affirming the ALJ's recommendation that appropriate remedies included the dismissal of the decertification petition. Gallo filed its petition for review on December 2, 2004. Decertification Petitioner Roberto Parra filed a petition for review on December 3, 2004. The certified record was filed on December 10, 2004. The election objections are in abeyance pending completion of the ULP case.

**Sutter Mutual Water Company, 05-RC-1-VI**

On Wednesday, January 26, 2005 Teamsters Local 137 filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Sutter Mutual Water Company in Robbins, CA. The employer is a water district and water supplier. The unit includes approximately 10 employees who deliver water to farms. The Regional Director issued a letter finding that the agency has jurisdiction to proceed with petition. The Regional Director denied the employer's request that the ballots be impounded. The election was held February 2, 2005, with the following tally:

General Teamsters Local 137	5	
No Union	2	
Unresolved Challenged Ballots		<u>0</u>
Total	7	

Objections to the election were filed on February 9, 2005. An investigative hearing opened on March 24, 2005 in Woodland, California, and was placed in abeyance due to a medical emergency. The matter has been reset for July 12 and 13, 2005.

**McCahon Floral, 05-RD-1-SAL**

On April 15, 2005 agricultural employee Susana Vasquez filed a decertification petition with the Salinas Regional Office seeking to decertify the UFW as the certified bargaining representative. The election was held on April 22, 2005 with the following results:

UFW	1	
No Union	29	
Unresolved Challenged Ballots		<u>1</u>
Total	31	

Election objections, if any, were due on April 29, 2005. Election objections were received from the UFW on May 2, 2005 and are in review.

**G H & G Zysling Dairy, 05-RC-4-VI**

On April 20, 2005 petitioner UFCW Local 1096 filed a rival union petition with the Visalia Regional Office seeking to organize the agricultural employees of G H & G Zysling Dairy and oust the incumbent union Teamster Union, Local 517. The employer is a dairy located in Dinuba with approximately 12 employees. The election was held on April 27, 2005 with the following results:

UFCW, Local 1096 (Petitioner)	8
Teamsters, Local 517 (Incumbent)	1
No Union	4
Unresolved Challenged Ballots	<u>13</u>
Total	26

Objections, if any, are due May 4, 2005. Since the unresolved challenged ballots are outcome determinative in number, the RD will conduct a challenged ballot investigation and issue a report. UFCW representative Jose Luis Herrera has advised the Executive Secretary that the union is filing objections to the election.

**Tony & Dina Esteves dba Esteves Dairy, 05-RC-5-VI**

On April 28, 2005 UFCW filed a representation petition with the Visalia Regional Office seeking to represent the agricultural employees of Tony & Dina Esteves dba Esteves Dairy. The employer is a dairy located in Visalia with approximately 10 employees. The pre-election conference was held on Tuesday and the election is scheduled for May 5, 2005. Balloting will take place between 6:00 a.m. and 8:30 a.m.

**COMPLAINT REPORTS**

No new complaints have issued.

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED**

Nothing new to report.

**HEARINGS HELD:**

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

The hearing commenced April 5, 2005 and is still in progress.

**ONE CASE ON CALENDAR:**

**Sutter Mutual Water Company, 05-RC-1-VI**

Investigative hearing has been reset for July 12 and 13, 2005.

**CASES PENDING ALJ DECISION:**

None.

**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:**

**Sun World International, Inc., 01-CE-613-EC**

The Regional Director filed a Motion to Make Cases Eligible for Pay out from AERF on April 26, 2005.

**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. Amicus Western Growers Association's reply brief was filed on July 8, 2004, and Petitioner's reply brief was filed on July 9, 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 was 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. Amicus

Western Growers Association's reply brief was filed on July 8, 2004, and Petitioner's reply brief was filed on July 9, 2004.

**ALRB v. D'Arrigo Bros, 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 rescheduled the hearing set for December 3, 2004, to address the issues of the two conflicting orders to December 17, 2004; however, on December 16, counsel for the UFW and for D'Arrigo indicated that they wished to work out a stipulated order after hearing and all parties agreed to have the court take the matter off calendar.

The UFW applied to intervene in the case on December 15, 2004, and the court issued an order granting the UFW's application on December 15, 2004.

Attorneys for D'Arrigo and the UFW were not able to reach a stipulated order after hearing, therefore the Board applied to the Monterey County Superior court to have the subpoena enforcement matter put back on the calendar so a final order after hearing could be obtained from the court. The hearing was held on April 15, 2005, and the judge signed the Board's proposed order after hearing. The final order was served on all parties in the matter on April 18, 2005.

**Gallo Vineyards, Inc., C048387**

The Board issued its decision on November 5, 2004. Gallo filed its petition for review on December 2, 2004. Roberto Parra filed a separate petition for review on December 3, 2004. The certified record was filed on December 10, 2004. On December 20, 2004, the Court on its own motion consolidated the petitions filed by Gallo and Parra. The parties have stipulated to extend the briefing schedule, and the court approved the stipulation. The petitioner's brief was due on March 20, 2005 with the ALRB's brief to be due 90 days after the filing of petitioner's brief. The petitioner's reply brief is due 80 days following the ALRB's brief. The court granted Petitioner's request for a 30 day extension to April 20, 2005 to file its opening brief. Petitioner has requested another extension to May 11, 2005, to file its opening brief.

**Hadley Date Gardens, Inc., E037704**

A petition for review was filed on March 18. However, the petition was not verified, as required by Rule 59 of the Cal. Rules of Court. An amended petition was filed on April 1. Though the 30-day period for filing a petition for review under sec. 1160.8 is jurisdictional, it has been held that the lack of a verification is a curable defect as long as the petition itself was filed within the time limit, as it was here. (See *UFW v. ALRB* (1985) 37 Cal.3d 912.) Though no official notification of the filing has been received from the court, the certified record was filed with the court on April 18, 2005.

**6. Budget and Administration**

(a) Information Technology: Analyst Massie reported that Jack King from CapData would be replacing Stephen Wicklund during his vacation.

(b) Regulations: Nothing new to report.

(c) Budget:

An extension of the contract with the Attorney General's office was discussed.

Purchasing Authority Approval - Mary Dodson, Purchasing Authority Specialist for DGS, has informed the agency that the ALRB's purchasing authority has been approved. However, DGS noted various deficiencies in our Purchasing Authority that need to be corrected by the due dates indicated.

Executive Secretary Barbosa presented an update of various projects that are in progress.

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

(e) Labor and Workforce Development Agency: Nothing new to report.

(f) 30<sup>th</sup> ALRB Anniversary Reception: The event will be held on June 7, 2005, from 4-6 p.m. Invitations are ready for mailings. Staff continues to work on assignments and further details were discussed.

(g) Annual Report: Work continues on the Annual Report. Executive Secretary issued revised assignment memo with instructions to finalize all sections of the report.



## 7. Outreach Projects

(a) Brochures: Nothing new to report.

(b) Radio Public Service Announcement:

Executive Secretary Barbosa contacted EDD officials last week and tentatively arranged for the recording of the two public service announcements (PSAs), in English and Spanish, on May 26, 2005 in Sacramento. The cost would be around \$250 to do the recording and would include production of either a master digital file for emailing and/or a reel-to-reel master copy on cassette. The agency would then take the master to a third party for duplication with sufficient copies to distribute the PSAs to key radio stations in rural and some urban areas (e.g., Los Angeles, Sacramento and Fresno).

(c) Handbook: Nothing new.

**8. Legislation: AB 1561 (Umberg) State boards and commissions: removal and penalties.** This bill would declare the intent of the Legislature to implement procedures that provide for the imposition of penalties, removal from office, or both, as to appointed members of state boards and commissions who do not adequately perform their duties, including the regular attendance of meetings.

**AB 38 (Tran, Strickland) State boards and commissions: salaries: suspension.** This bill would specify that members appointed to specified state boards and commissions shall receive no salary for the 2005-06, 2006-07, and 2007-08 fiscal years, except that they may receive a per diem payment of \$100 during that time. This bill is virtually identical to AB 556, which was introduced in 2003 and failed in committee early in January 2004. On April 13 the bill was amended to change the operative fiscal years to 2006-07, 2007-08 and 2008-09. The bill failed passage in the Assembly Business and Professions Committee on April 26, 2005.

**9. Personnel:** The Labor Agency has approved the ALRB's request to fill the vacant Administrative Law Judge (ALJ) position. The Board will now proceed to notice the half-time ALJ position. Retired annuitants will be encouraged to apply.

The Board voted 2-0, with Member Zingale abstaining, to amend the contract with Remcho, Johansen & Purcell for legal representation of Member Zingale. The amendment increases the maximum amount by an additional \$25,000. The contract, which covers the defense of the application for leave to sue in quo warranto filed by Gerawan Farming Inc., was originally for a maximum of \$25,000, most of which has been charged. The amendment is necessitated by Gerawan's filing of a Petition for

Writ of Mandate filed in Sacramento County Superior Court seeking to overturn the Attorney General's denial of leave to sue in quo warranto.

**10. Compliance:** Delegation of Authority for Compliance—The Board approved a written delegation of authority for compliance to the Regional Directors. The delegation formalizes the de facto delegation that is reflected in long-standing regulations.

**11. Future Agenda Review:** Nothing new to report.

The public meeting adjourned at 11:15 a.m.