

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**September 28, 2005**

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

**OPEN SESSION**

- 1. Approval of Minutes:** The minutes for the September 21, 2005 Board Meeting were approved 3-0.
- 2. Board Member Comments:** On behalf of the Board, Chairwoman Shiroma wished Board Member Zingale well in his new endeavor with First Lady Maria Shriver's office beginning November 1, 2005.
- 3. Public Comments:** None.
- 4. Announcements:** None.

**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):** No new NAs/NOs to report.

**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 was held on March 24 and July 12, 2005 in Woodland, California. Both the petitioner and employer filed post-hearing briefs. The IHE decision issued September 1, 2005. Exceptions to the decision were received September 15, 2005. Replies were received on September 23, 2005.

**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        |

Since the unresolved challenged ballots are outcome determinative in number, the RD conducted a challenged ballot investigation and issued his report on July 18, 2005. The Regional Director, after reviewing all the declarations and the information provided by the parties, was unable to resolve the challenges and therefore set the matter for hearing on October 24, 2005. On May 9, 2005 the UFCW filed objections to the election. The objections petition is in abeyance pending completion of the challenged ballot proceeding.

**Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI**

On August 25, 2005 petitioner United Farm Workers (UFW) filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Giumarra Vineyards Corporation and Giumarra Farms, Inc. The employer is involved in the production of grapes and potatoes and has approximately 3110 employees in Kern and Tulare counties. The election was held on September 1, 2005 with the following results:

|                               |            |
|-------------------------------|------------|
| UFW,                          | 1121       |
| No Union                      | 1246       |
| Unresolved Challenged Ballots | <u>171</u> |
| Total                         | 2538       |

Since the unresolved challenged ballots are outcome determinative in number, the RD is conducting a challenged ballot investigation and will be issuing his report forthwith. The challenges fall into three major categories (supervisors, no identification and not on list). The Regional Director has requested the parties' positions by September 12, 2005. Election objections, if any, were due on September 9, 2005.

**Jim Nace Dairy, 05-RC-8-VI**

On September 9, 2005, petitioner United Food and Commercial Workers (UFCW), Local 1096, filed a representation petition with the Visalia Regional Office seeking to organize the agricultural employees of Jim Nace Dairy. The employer is a dairy located in Tipton with 16 employees. The election was held on September 16, 2005, with the following results:

|                               |          |
|-------------------------------|----------|
| UFCW                          | 9        |
| No Union                      | 4        |
| Unresolved Challenged Ballots | <u>0</u> |
| Total                         | 13       |

Election objections, if any, were due on September 23, 2005.

**COMPLAINT REPORTS**

**PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED**

None.

**HEARINGS HELD:**

None.

**TWO CASES ON CALENDAR:**

**Dan Tudor and Sons, 02-CE-13-VI**

Pre-hearing Conference: held August 2, 2005

Hearing: October 11, 2005

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

Hearing: October 24, 2005

**CASES PENDING ALJ/IHE DECISION:**

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

Post-hearing briefs are due October 3, 2005.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASE PENDING EXCEPTIONS OR REPLY:**

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

Exceptions were received September 15, 2005. Replies are due September 23, 2005.

**CASES PENDING BOARD DECISION:**

None.

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

None.

**CASES TRANSFERRED TO BOARD FOR DECISION:**

None.

**BOARD DECISIONS:**

**The Hess Collection Winery, 99-CE-23-SAL (27 ALRB No. 2)**

Board's decision in Hess Collection Winery issued September 1, 2005 (31 ALRB No.3).

**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.

### **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. Parra filed an opening brief on May 20, 2005, and Gallo filed its opening brief on June 10, 2005. The ALRB's response brief was filed September 10, 2005. Any reply briefs by the petitioners are due 80 days after the filing of the response briefs.

## **6. Budget and Administration**

(a) Information Technology: Nothing new to report.

(b) Regulations: No public comment has been received to the proposed amendment to title 8, section 20299.

(c) Budget: nothing new to report.

(d) Labor and Workforce Development Agency: The next General Counsel meeting is scheduled for December 2005.

**7. Outreach Projects**

(a) ALRB Brochures—Photographs for new brochures were picked up by the Office of State Publishing (OSP) this week.

(b) Handbook— The Board approved the final proof of the handbook and OSP will proceed with printing.

(c) Public Service Announcement—Nothing new to report.

**8. Legislation:** Nothing new to report.

**9. Personnel:** The closing date for the AGPA/SSA position was September 16, 2005. Several applications were received.

**10. Compliance: Grewal Enterprises, Inc.** (24 ALRB No. 7 and 26 ALRB No. 5): The Board granted the regional director's motion to make cases eligible for payout from the Agricultural Employee Relief Fund. Administrative order 2005-07 granting the motion and closing the cases was issued on September 26, 2005.

**11. Future Agenda Review:** None.

The public meeting adjourned at 10:35 a.m.

**WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.**