

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

November 16, 2005

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

OPEN SESSION

- 1. Approval of Minutes:** The minutes for the November 9, 2005 Board Meeting and the November 3, 2005 Regional Directors' Quarterly Meeting Minutes were approved 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

Executive Secretary Barbosa attended the Respondents' Counsel Roundtable meeting yesterday at the State Compensation Insurance Fund in Sacramento. The Counsel discussed potential management responses to recent public sector union activity at various state offices. The next meeting is scheduled for February 14, 2006.

The Industrial Relations Association of Northern California's Holiday Party is scheduled for December 1, 2005 at 2406 H Street, Sacramento, from 5-7 p.m.

The Board meeting scheduled for November 23, 2005 has been canceled.

The public meeting notice is being prepared and will issue early next week.

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.

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

On May 9, 2005 the UFCW filed objections to the election. The objections petition is in abeyance pending completion of the challenged ballot proceeding. 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. The hearing was held on October 24, 25 and 26 and is now completed. The parties are waiting for the transcripts with the posthearing briefs and IHE decision to follow.

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 conducted a challenged ballot investigation and issued his report on October 14, 2005. The Employer filed one exception to the report on October 26, 2005. On October 31, 2005, the Board issued its decision and order on challenged ballots. There, the Board adopted the Regional Director's recommendations set forth in the report, i.e., to open and count 41 overruled challenged ballots and thereafter issue a revised tally of ballots. On November 14, 2005 the Regional Director opened and counted the 41 overruled challenged ballots and issued the following revised and now final tally:

UFW	1141
No Union	1266
Unresolved Challenged Ballots	<u>123</u>
Total	2530

As the remaining unresolved challenged ballots are not outcome determinative, the Executive Secretary will now proceed with consideration of the election objections filed by the UFW. The Executive Secretary will set for an evidentiary hearing any objections properly supported by declarations that, if true, would constitute grounds for setting aside the election. The dismissal of any objections by the Executive Secretary will be subject to appeal to the Board.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

CASES ON CALENDAR:

None.

CASES PENDING ALJ/IHE DECISION:

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

Pending transcripts and posthearing briefs.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS OR REPLY:

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

Post-hearing briefs received October 3, 2005.

ALJ Decision was issued October 21, 2005.

Exceptions received November 14, 2005. Replies are due November 28, 2005.

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. 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 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 UFW's response brief was filed September 8, 2005. The ALRB's response brief was filed September 9, 2005. Petitioner, Roberto Parra, filed a reply brief on September 28, 2005.

Gerawan Farming, Inc. v. Bill Lockyer, 05-CS 00493

The Board discussed the status of the case in light of former Member Zingale's departure from the Board. The Board asked counsel to contact the attorney of record for the Attorney General to find out if the AG was planning to file a motion to dismiss.

6. Budget and Administration

- (a) Information Technology: Budget Letter 05-32 regarding the Informational Technology Security Policy – Encryption on Portable Computing Devices was discussed. Executive Secretary Barbosa will contact LWDA to ascertain if an Agency-wide policy will be forthcoming.
- (b) Regulations: On October 26, 2005, the Board adopted, as proposed, amendments to section 20299 of the AERF regulation. The amendments were filed with the Office of Administrative Law and approval is expected by December 21, 2005. The regulations will go into effect 30 days after approval and filing with the Secretary of State.
- (c) Budget: Accounting Officer Davis is working on updated budget projections.
- (d) Labor and Workforce Development Agency: The General Counsels' meeting is scheduled for December 1, 2005. LWDA General Counsel Dresser has requested a list of all training provided to ALRB attorneys and administrative law judges within the last 12 months. The information is being compiled and will be sent over.
- (e) Protection of Personal Information Collected on Official Forms: The Board discussed the need to review the requirements of the Information Practices Act (IPA), as well as any other pertinent authorities, with regard to the disclosure of personal information obtained from those filing official forms. While it appears that exceptions to the IPA would allow most of the forms to continue to be treated as disclosable public documents, counsel will look into the issue further. In addition, the Executive Secretary will raise the issue for discussion at the next Labor Agency Chief Counsel meeting.

7. Outreach Projects

- (a) ALRB Brochures—Work continues at Office of State Printing.
- (b) ALRB Handbook—Accounting Officer Davis is making arrangements for the storage and distribution of handbooks.
- (c) Public Service Announcement—Information on the new PSA has been forwarded to DGS and we are awaiting a cost estimate.

(d) DVD Novella— Arrangements are being made for interested LWDA staff to view the DVD version of the Novella.

8. Legislation: Nothing new to report.

9. Personnel: Shirley Lyons has been hired as a retired annuitant to fill the business services officer position.

10. Compliance: The Board discussed the November 9, 2005, status memorandum from Regional Director Alderete regarding compliance in the tomato cases.

11. Future Agenda Review: No public meetings will be held on December 21 or December 28, 2005.

The public meeting adjourned at 11:20 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.