

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**November 30, 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 16 and 29, 2005 Board meetings were approved 3-0.
- 2. Board Member Comments:** None.
- 3. Public Comments:** None.
- 4. Announcements:**

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

The Chief Counsel's meeting at the Labor Agency is scheduled for tomorrow, December 1, 2005.

The EDD Farm Worker Breakfast in Calexico is being held on December 9, 2005.

A one-day seminar entitled *Electronic Discovery and Document Storage: Management and Litigation Issues in California* will be held in Folsom, California on February 7, 2006.

The State Employees Food Drive continues and will conclude on December 16, 2005.

**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. All briefing by the parties was completed on November 28, 2005. 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 post-hearing briefs are due December 16, 2005 with the 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 proceeded with consideration of the election objections filed by the UFW. On November 17, 2005 the Executive Secretary issued his order setting eight (8) objections for an evidentiary hearing and partially dismissing two (2) objections that were not supported by sufficient declaratory support. The UFW sought review of a single partially dismissed objection. The request for review is pending before the Board. A hearing has been scheduled for February 21, 2006 in Bakersfield before an investigative hearing examiner (IHE). After the hearing, the IHE will issue a recommend decision on the objections. That decision may be appealed 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

The posthearing briefs are due December 16, 2005.

**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 to Exceptions are due December 19, 2005.

**CASES PENDING BOARD DECISION:**

None.

**CASES SETTLED OR RESOLVED:**

None.

**COMPLIANCE CASES CLOSED:**

**Aurora Farms dba Borba Dairy (Padilla)** - 03-CE-18-EC(R)

The Respondent has complied with all of the Board's orders in this case and the Regional Director has issued a closing letter.

**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. Petitioner, Gallo Vineyards, Inc., filed a reply brief on November 28, 2005.

## **6. Budget and Administration**

- (a) Information Technology: The most recent outbreak of the Sober worm and precautions to take to prevent infection were discussed.
- (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. Board Counsel Wender responded to an OAL inquiry regarding the pending regulation
- (c) Budget: Nothing new to report.
- (d) Labor and Workforce Development Agency: The General Counsels' meeting is scheduled for December 1, 2005. The information LWDA General Counsel Dresser requested regarding a list of all training provided to ALRB attorneys and administrative law judges within the last 12 months was forwarded to Agency. The LWDA Senior Management meeting is scheduled for December 16, 2005.

Marisa Duek from Agency sent an email reminder advising the ALRB that AB 1825, Statutes of 2004, requires all employers with 50 or more employees to provide sexual harassment training to all its supervisory staff by no later than January 1, 2006. Training status for both Board and General Counsel programs will be reviewed to assure the ALRB is in full compliance. In addition to sexual harassment training, Member Raymundo suggested training regarding accessibility requirements also be explored.

- (e) Annual Report: Executive Secretary Barbosa will issue an assignment memo regarding the upcoming annual reports
- (f) Public Records Act Requests: The Board requested Executive Secretary Barbosa report all Public Records Act requests.

## **7. Outreach Projects**

- (a) ALRB Brochures—The new brochures are ready for printing. Storage arrangements will be made.

(b) ALRB Handbook—Arrangements were made for the storage and distribution of handbooks.

(c) Public Service Announcement—Information on the new PSA has been forwarded to DGS and we continue to await a cost estimate.

(g) DVD Novella— Executive Secretary Barbosa will reschedule viewing by interested LWDA staff of the DVD version of the Novella.

**8. Policies and Procedures** – Encryption Policy – Analyst Massie will contact Pam Harris of Agency regarding the development of an Encryption Policy.

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

**10. Personnel:** Nothing new to report.

**11. Compliance:** Regional Director Alderete requested the assistance of Board Counsel Murray to process the tomato cases. Board Counsel Murray turned over all information regarding this matter to the General Counsel some time ago.

The Board would like Professor Philip Martin U.C. Davis to make a presentation of his findings to the Board upon completion of his report on methods of calculating bargaining makewhole.

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

The public meeting adjourned at 11:30 a.m.

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