

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

February 8, 2006

Time: 10:00 a.m.

Members Present: Chairwoman Shiroma, Board Members Raymundo and Rivera-Hernandez

Members Absent: None.

Staff Present: Acting General Counsel Blanco, Executive Secretary Barbosa, Board Counsel Wender, Murray and Heyck, Analyst Massie, Accounting Officer Davis, and Budget Officer Vogel.

Staff Absent: None.

Others Present: None.

OPEN SESSION

1. Approval of Minutes: The minutes for the November 30, 2005, and February 1, 2006 Board meetings were approved 3-0.

2. Board Member Comments: Chairwoman Shiroma and Board Member Raymundo attended the California Farm Bureau Federation 2006 Legislative Reception held on February 7, 2006 where they received a warm welcome.

3. Public Comments: None.

4. Announcements:

Executive Secretary Barbosa and Analyst Massie are scheduled to attend the California Public Sector CIO Academy, hosted by Government Technology Conference on February 14 and 15, 2006.

Respondent's Roundtable meeting is scheduled for February 14, 2006 from 9 a.m. to 12 noon.

The FPPC will conduct workshops on the duties of filing officials/officers regarding statements of economic interests on the following dates: February 14 and 23, at the FPPC, 428 J Street, 8th Floor Hearing Room, Sacramento.

Senior Board Counsel Murray attended the Electronic Discovery and Document Storage: Management and Litigation Issues Workshop on February 7, 2006.

UOP-McGeorge School of Law Spring Recruitment Season runs from March 1-April 14.

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 Board issued its decision (30 ALRB No. 2) in this case on the underlying ULPs on November 5, 2004. The Administrative Law Judge (ALJ) found that two Gallo crew supervisors asked the members of their crews to sign papers in support of a decertification petition. The ALJ found that this conduct violated the ALRA and that word of this conduct was likely to have been disseminated and that it was impossible to determine how far the dissemination had gone. The Judge therefore found that the decertification petition was tainted and should be dismissed and the election set aside. The Board affirmed the findings and conclusions of the ALJ, finding that the conduct in this case amounted to illegal influence invalidating the decertification petition.

The employer, Gallo Vineyards, Inc., and the Real Party in Interest, Roberto Parra filed petitions for review of the Board's decision in the Court of Appeal, Third Appellate

District. On December 9, 2005, the court summarily denied both petitions for review. Both parties filed petitions for review in the California Supreme Court on December 19, 2005. The Board filed its answer to the petitions on January 8, 2006. Petitioner Gallo filed its reply on January 19, 2006. On January 25, 2006, the California Supreme Court denied the petitions for review. The case is now final and the election has been set aside.

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. The IHE issued his decision on February 2, 2006. Exceptions are due February 17, 2006 with replies due March 1, 2006.

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, which was denied by the Board. A hearing has been scheduled for February 28, 2006 in Bakersfield before an investigative hearing examiner (IHE). The Regional Director has filed a motion for release of declarations in support of Objection No. 8 which is pending before the Executive Secretary. The Regional Director, through his assigned attorney, has indicated he will be seeking a continuance of this case due to scheduling conflicts. This latter motion is expected to be filed shortly.

COMPLAINT REPORTS

Gregg Surabian & Son, 05-CE-33-VI

The Visalia Regional Director issued a complaint on January 27, 2006 against Gregg Surabian & Son, Case No. 05-CE-33-VI. The complaint alleges that a company foreman unlawfully terminated approximately 8 members of a crew after various crew members complained to company representatives about the heat and break time for workers. The Regional Director anticipates setting this for hearing soon.

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

CASES ON CALENDAR:

None.

CASES PENDING ALJ/IHE DECISION:

None.

ALJ/IHE DECISIONS ISSUED:

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

Exceptions due February 17, 2006

Replies due March 1, 2006

CASE PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

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

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. On December 9, 2005, the Court of Appeal,

Third Appellate District summarily denied both petitions for review. Both parties filed petitions for review in the Supreme Court on December 19, 2005. The Board filed its answer to the petitions on January 8, 2006. Petitioner Gallo filed a reply brief on January 19, 2006. On January 25, 2006, the California Supreme Court denied the petitions for review. The case is now final and the election has been set aside. The case is now resolved.

6. Budget and Administration

(a) Information Technology: Analyst Massie informed the Board of the Microsoft Enterprise Agreement and the new mandatory wireless equipment and services contracts.

(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 were approved December 13, 2005. The regulations went into effect 30 days after approval and filing with the Secretary of State, January 12, 2006.

(c) Rulemaking Calendar – The Board has no planned rulemaking items this year.

(d) Budget - Update: Budget Officer Vogel reviewed Third Quarter Expenditure Projections for the current fiscal year.

(e) Labor and Workforce Development Agency: Board Counsel Wender reported that the Electronic Records Management Workgroup will likely result in a model policy on electronic discovery and litigation holds that the Board may consider adopting.

(f) Bargaining Makewhole – Board Counsel Wender will contact Professor Phil Martin, U.C. Davis, to reschedule his report on his project to develop formulae or algorithms to simplify the process of determining bargaining make whole.

(g) Case Tracking System – The status of inputting and retrieval of information into case tracking system that allows user to generate the status of cases and statistical information was discussed. The Board will seek assistance in report preparation and transferring remaining unconverted files from the Dbase database to the Access database.

7. Outreach Projects

- (a) Brochures—Arrangements for distribution of the remaining brochures to the regions are being made.
- (b) ALRB Handbook—Arrangements were made for the storage and distribution of handbooks.
- (c) Public Service Announcements—Executive Secretary Barbosa has not received a cost estimate from DGS.
- (d) DVD Novella—Since Javier Juarez is unavailable to provide the artwork for the DVD cover, the Board recommended using the novella cover.
- (e) Update on Educational and Outreach Material in the Regional Offices and Efforts to Distribute to Farmworkers – The regional directors in a telephone conference held on February 7, 2006 briefed the Board on current outreach efforts and anticipated election activity in the summer months.

8. Policies and Procedures – Analyst Massie is awaiting a reply from Pam Harris of EDD regarding an encryption policy. The committee will discuss the necessity for a policy regarding retention of email.

9. Legislation:

AB 38 (Tran, Strickland) State boards and commissions: salaries: suspension.

This bill, as amended, provided that members appointed to specified state boards and commissions shall receive no salary for the 2006-07, 2007-08, and 2008-09 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 January 6, 2006, the bill died pursuant to Article IV, Section 10(c) of the Constitution.

AB 1561 (Umberg) State boards and commissions: removal and penalties.

This bill, as amended on January 23, 2006, would require boards or commissions notify the appointing power of a failure of a member to attend 3 out of 4 consecutive meetings. The appointing power then would be authorized to remove the member.

The bill passed out of the Assembly on January 26, 2006 (Ayes 74, Noes 1), and has been referred to the Senate Rules Committee.

9. Personnel: Chairwoman Shiroma will meet with Acting General Counsel Blanco and Administration staff regarding partnering with sister agencies on exams, the possibility of establishing permanent-intermittent employees for seasonal work in the regions, and assistance from a sister agency of a knowledgeable user of Microsoft Access.

10. Compliance: The Executive Secretary issued a Case Status Memo on February 2, 2006 releasing Gallo Vineyards, Inc., 03-CE-9-SAL et al (30 ALRB No.2) for compliance.

11. Future Agenda Review: The next Board Meeting is tentatively scheduled for Wednesday, March 1, 2006.

The public meeting adjourned at: 11:59 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.