

**STATE OF CALIFORNIA  
AGRICULTURAL LABOR RELATIONS BOARD**

**BOARD MEETING MINUTES**

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

**July 12, 2006**

**Time:** 1:30 p.m.

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

**Members Absent:** None.

**Staff Present:** Executive Secretary Barbosa, Board Counsel Wender, Murray and Heyck

, and Analyst Massie.

**Staff Absent:** General Counsel Lee

**Others Present:** Libby Sanchez, Law Offices of Barry Broad

**OPEN SESSION**

- 1. Approval of Minutes:** Approval of the minutes for June 28, 2006 was postponed until the next Board meeting.
- 2. Public Comments:** None.
- 3. Chair Budget Report:** Due to the current peak energy use, the staff was reminded to implement energy conservation measures.
- 4. General Counsel Report:** ULP Charges, New Complaints, Visalia Office Relocation & Salinas Office Repairs – Chairwoman Raymundo reported that negotiations are proceeding on a new location for the Visalia Regional office. Contingency plans are being developed in the event we are required to vacate the current office before the new location is ready to occupy. In anticipation of possible

upcoming elections required a large number of Board agents, a contract covering NLRB employees used during ALRB elections has been prepared. ADA compliance of the El Centro Regional Office will be reviewed in anticipation of the expiration of the current lease.

**5. Executive Officer Report:  
ELECTION REPORT**

**NOTICE OF INTENT TO TAKE ACCESS (NA) AND NOTICE OF INTENT TO ORGANIZE (NO):**

The UFW filed a notice of intent to organize (NO) the agricultural employees of Larse Farming on June 30, 2006. (Case No. 06-NO-3-SAL)

The UFW filed a notice of intent to organize (NO) the agricultural employees of V & L Farms on June 30, 2006. (Case No. 06-NO-4-SAL)

**PENDING ELECTION MATTERS:**

**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. The petitioner, employer and Regional Director all filed exceptions to his decision on February 17, 2006. The employer filed his reply to the Regional Director's and petitioner's exceptions on March 1, 2006. The Board issued its decision on June 14, 2006 (32 ALRB No. 2). On July 6, 2006 the Regional Director issued a revised tally of ballots with the following results:

UFCW, Local 1096 (Petitioner)		8
Teamsters, Local 517 (Incumbent)	1	
No Union	12	
Unresolved Challenged Ballots	<u>1</u>	
Total	22	

On July 11, 2006, the Executive Secretary issued his order setting and dismissing election objections in Zysling Dairy, Case No. 05-RC-4-VI. The request for review, if any, is due July 21, 2006. Also, in accordance with the Board's decision in Zysling Dairy, 32 ALRB No. 2, the order included the additional objection set forth in the Board's decision: Whether payments to three employees amounted to coercive misconduct which interfered with the integrity of the election process. (Decision, p.15). A hearing has been scheduled for August 22, 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. An investigative hearing was held from February 28, 2006 to March 9, 2006 in Bakersfield before Investigative Hearing Examiner (IHE) James Wolpman. The parties' post-hearing briefs were received June 9, 2006. The IHE's decision is pending.

### **Artesia Dairy, 06-RC-1-VI**

On February 28, 2006, the United Farm Workers filed a representation petition with the Visalia Regional Office seeking an election amongst the agricultural employees of Artesia Dairy Farms LLC in Corcoran, CA. The employer is a dairy with approximately 45 employees. The election was held on March 7, 2006. The tally of ballots showed the following:

UFW	25
No Union	24
Unresolved Challenged Ballots	<u>15</u>
Total	64

As the number of challenged ballots was outcome determinative, the Regional Director conducted an investigation to determine whether the challenges should be sustained or

overruled. Election objections, if any, were due on March 14. No objections were filed. The Regional Director issued his Challenged Ballot Report on June 12, 2006. On June 22, 2006 the employer filed its exceptions to the Regional Director's report. The matter is pending before the Board on decision.

**Valley View Farms, 06-RD-3-VI.**

On Monday, July 10, 2006, agricultural employee Sergio Ozuna Lopez filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Valley View Farms. The employer operates a dairy in Hanford, CA with approximately 41 employees. An election, if appropriate, would be held on or about July 17, 2006. The petitioner has met the showing of interest and the pre-election conference is tentative scheduled for this Friday, July 14, 2006. is currently under investigation.

**COMPLAINT REPORTS**

**C. Mondavi & Sons, 06-CE-44-SAL**

On July 11, 2006, the Salinas Regional Director issued a complaint against C. Mondavi & Sons dba Charles Krug. The complaint alleges that the employer engaged in bad faith bargaining by eliminating its in-house farming operation and subcontracting that work to an outside management firm.

**Mesa Vineyard Management, Inc., 05-CE-60-VI**

The Visalia Regional Director issued his order consolidating compliance proceedings with unfair labor practice proceeding and issuing backpay specification. The case involves a single alleged discriminate with backpay owing in the amount of \$28,423.19

**ONE PREHEARING OR SETTLEMENT CONFERENCE SCHEDULED:**

**Milky Way, 03-CE-74-VI**

Prehearing: August 7, 2006

Hearing: September 11, 2006

**HEARINGS HELD:**

None.

**TWO CASES ON CALENDAR:**

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

Hearing scheduled August 22, 2006

**Milky Way, 03-CE-74-VI**

Prehearing: August 7, 2006

Hearing: September 11, 2006

**TWO CASES PENDING ALJ/IHE DECISION:**

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

Post-hearing briefs received June 9, 2006 and IHE decision pending.

**UFW (Virgen/Mendoza), 04-CL-1-VI (OX)**

Hearing closed June 16, 2006. Pending receipt of transcripts and post-hearing briefs.

**ALJ/IHE DECISIONS ISSUED:**

None.

**CASE PENDING EXCEPTIONS OR REPLY:**

None.

**CASES PENDING BOARD DECISION:**

**Artesia Dairy, 06-RC-1-VI**

Exceptions of Regional Director's Challenged Ballot Report were filed June 22, 2006.

**CASES PENDING SETTLEMENT:**

None.

**TWO CASES SETTLED OR RESOLVED:**

**C&R Farms, 05-CE-36-EC**

Parties reached an informal settlement agreement on June 23, 2006.

**Prime Time International, 05-CE-37-EC**

Parties reached an informal settlement agreement on June 30, 2006.

**COMPLIANCE CASES CLOSED:**

None.

**ONE CASE TRANSFERRED TO BOARD FOR DECISION:**

## **Artesia Dairy, 06-RC-1-VI**

Exceptions of Regional Director's Challenged Ballot Report were filed June 22, 2006.

### **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. Oral argument took place on June 19, 2006. On July 5, 2006, the 3rd District Court of Appeal rejected Hess Collection Winery's constitutional challenge to the mandatory mediation statute, by a 2•1 decision (Nicholson dissenting). The matter is pending the filing of a petition for review before the Supreme Court if desired.

## **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. Oral argument took place on June 19, 2006. On July 5, 2006, the 3rd District Court of Appeal rejected Hess Collection Winery's' constitutional challenge to the mandatory mediation statute, by a 2•1 decision (Nicholson dissenting). The matter is pending the filing of a petition for review before the Supreme Court if desired.

**Gerawan v. Bill Lockyer (Zingale), 05 CS 00493**

On May 17, 2006 the 3<sup>rd</sup> District Court of Appeal issued an order directing the Appellant Gerawan to, on or before May 30, 2006, show cause in writing why the

above-captioned appeal should not be dismissed as moot. The court later extended this date to June 16, 2006 following Gerawan's motion for extension of time that was granted on May 25, 2006. On June 16, 2006 Gerawan filed its reply brief with the court. The matter is now fully briefed and pending decision and/or oral argument.

**D'Arrigo Bros. of California, D048904**

On June 29, 2006 the petitioner D'Arrigo Bros. of California filed a petition for writ of review with the Fourth Appellate District, Division One. On July 7, 2006 the court sent a letter to the parties directing that the record be prepared within ten (10) of the notice. On July 11, 2006, the ALRB filed a motion for extension of time to file the certified record by August 16, 2006.

**6. Special:**

**Case Statistics Tracking System/Website Redesign Update** – Member Shiroma reported Analyst Massie will be meeting with the consultant tomorrow on both projects.

**Emergency Preparedness & Telecommuting Plans** – Member Rivera-Hernandez reported the Continuity of Operations/Continuity of Government Plan work is continuing. Member Rivera-Hernandez will attend a workshop on the project on July 30-August 1.

**Annual Report** – The report has been circulated to the Board and General Counsel for approval.

**Operational Recovery Plan** – Analyst Massie circulated the updated Operational Recovery Plan and the plan was approved 3-0.

**Encryption Policy** – Analyst Massie circulated a draft encryption policy.

**Other** –

**2005-06 Annual Contracting Reports**

Assembly Bill 139 (Statutes of 2005) changed the report requirements and responsibilities for the Small Business (SB), Microbusiness (MB), Disabled Veteran Business Enterprise (DVBE), and consulting services annual reports. Under the new

changes to the Public Contract Code Section 10111, the Department of General Services (DGS) will now produce a single annual report that combines the statistics from all the aforementioned reports and all State entities. Reporting entities will no longer send their reports to the Legislature, the Governor's Office and various others.

In order to comply with this new requirement and provide a timely submittal to the Legislature by December 30, 2006, the DGS must receive a single submittal from each reporting entity for all the above reports for Fiscal Year (FY) 2005-2006 by August 1, 2006.

**Agricultural Employee Relief Fund** –The balance in the AERF is sufficient to pay 26.23% of the claims of all those eligible for pay out. The names of claimants and the individual amounts to be paid out will be entered on to a spreadsheet to be provided to the Accounting Officer and the Regional Directors. Once that is completed, the 2006 pay out from the AERF may begin.

**Purchasing Authority Deficiencies Report** – The Purchasing Authority Deficiencies Report is due July 31. Executive Secretary Barbosa has discussed the progress of the report with AGPA Lyons.

**Makewhole Project** – The Board discussed the review of the report prepared by Dr. Phil Martin for the Board. Senior Board Counsel Joe Wender will send Dr. Martin's study to the Regional Directors for their comment.

## **7. Roundtable:**

An invitation to appear on the Comcast Local Edition show to discuss agricultural labor was received by Member Shiroma. The Board would like Executive Secretary Barbosa to make the presentation.

The public meeting adjourned at 3:20 p.m.

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