

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

August 9, 2006

Time: 10:00 a.m.

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

Members Absent: None.

Staff Present: General Counsel Lee, Executive Secretary Barbosa, Counsel Wender, Murray and Heyck, Analysts Massie and Barr.

Staff Absent: None

Others Present: None.

OPEN SESSION

- 1. Approval of Minutes:** The minutes for August 2, 2006 were approved 3-0.
- 2. Public Comments:** None
- 3. Chair Report:** Chairwoman Raymundo reported that a meeting has been scheduled for August 15 with the Mexican Consul's Office to further discuss the outreach training workshop.
- 4. General Counsel Report:** ULP Charges, New Complaints, Visalia Office Relocation & Salinas Office Repairs – Approximately 12-15 new charges have been filed in the Visalia Regional Office involving dairy operations.

5. Executive Officer Report:

ELECTION REPORT

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

V. B. Zaninovich, 06-NA-2-VI

On August 8, 2006, the United Farm Workers of America (UFW) filed a Notice of Intent to Take Access (NA) at V. B. Zaninovich, a large table grape grower operating in the Delano-Bakersfield area. Service of the notice on the employer and filing of the notice with the ALRB are necessary prerequisites for taking access to an employer's property pursuant to Regulation 20900 (Title 8, Cal. Code Regs., sec. 20900). Access may be taken for one hour before and after work and during the employees' lunch period. An NA normally signals an active or potential organizing drive at that employer. A labor organization that has filed a valid NA within the previous 30 days may file a Notice of Intention to Organize (NO), which must be supported by authorization cards or a petition signed by at least 10% of the current employees. A valid NO entitles the labor organization to a list of current employees, their current home addresses, and their job classifications. In light of the filing of the NA, there is a substantial likelihood that an election petition will be filed in the near future. Estimates of the size of the potential bargaining unit in this case range from 1500 to 2500. Further information will be provided as received.

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) The hearing is scheduled November 14, 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
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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 issued August 7, 2006. Exceptions are due August 21, 2006. Replies, if any, are due August 31, 2006.

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
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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 Board's decision in Artesia Dairy issued August 2, 2006. The Executive Secretary's office will be setting this matter for hearing.

Valley View Farms, 06-RD-3-VI

On 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. The election was held on July 17, 2006 and yielded the following results:

UFCW	17
No union	16
UCBs	<u>5</u>
Total	38

The number of unresolved challenged ballots is sufficient to affect the outcome of the election. The Regional Director will prepare and issue a challenged ballot report. On July 24, 2006 the employer filed objections to the election which are pending before the Executive Secretary on review.

Bayou Vista Dairy, 06-RD-4-VI

On July 18, 2006, agricultural employee Alejandro Ayala filed a decertification petition with the Visalia Regional Office seeking to decertify the incumbent union, UFCW Local 1096, at Bayou Vista Dairy. The employer operates a dairy in Tipton, CA with approximately 80 employees. The election was held July 25, 2006. On July 24, 2006, an unfair labor practice (ULP) charge alleging conduct that may impact the election was filed against the employer. Immediately following the election, the Regional Director of the Visalia Regional Office informed all parties that due to the

filing of the ULP charge, he would impound the ballots cast in the election until he completes his expedited investigation of the ULP charge. The Regional Director's investigation of the pending ULP is ongoing. On August 2, 2006 the employer and then the union filed objections to the election which are pending before the Executive Secretary on review.

COMPLAINT REPORTS

Aguiar Dairy, 05-CE-35-VI

On August 1, 2006 the Regional Director issued an order consolidating unfair labor practice and compliance hearings.

ONE PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

Milky Way, 03-CE-74-VI

The prehearing previously scheduled for August 11, 2006 has been moved to August 18, 2006 as the assigned General Counsel attorney has been called to jury duty.
Hearing September 11, 2006

HEARINGS HELD:

None.

TWO CASES ON CALENDAR:

Milky Way, 03-CE-74-VI

Pre-hearing: August 18, 2006

Hearing: September 11-14, 2006

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

Hearing November 14, 2006

ONE CASE PENDING ALJ/IHE DECISION:

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

Hearing closed June 16, 2006.

Post-hearing briefs previously due August 21, 2006 are now due September 20, 2006.

ALJ/IHE DECISIONS ISSUED:

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI
IHE decision issued August 7, 2006. Exceptions are due August 21, 2006. Replies, if any, are due August 31, 2006.

CASE PENDING EXCEPTIONS OR REPLY:

None.

CASES PENDING BOARD DECISION:

Artesia Dairy, 06-RC-1-VI

The Board's decision and order issued August 2, 2006.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

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. 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). On July 14, 2006, Hess Collection Winery filed a petition for rehearing with the 3rd District Court of Appeal. On July 20, 2006 the court denied Hess' petition for rehearing. Any petition for review in the Supreme Court is due August 14, 2006.

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

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

On May 17, 2006 the 3rd 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. Oral argument has been scheduled for September 25, 2006 at 2:00 p.m. in Sacramento before the 3rd District Court of Appeals.

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 to August 16, 2006, which was granted by the court on July 18, 2006.

6. Special:

Case Statistics Tracking System/Website Redesign Update – The project is

proceeding on schedule. Steve Guida will meet with staff tomorrow on both the database and website projects.

Emergency Preparedness & Telecommuting Plans – Member Rivera-Hernandez reported that there will be a meeting this afternoon regarding the Continuity of Operations/Continuity of Government Plan. After reviewed by pertinent staff, a working draft will issue.

Native American Heritage Commission – NAHC Executive Director Meyers requested additional space be made available by October 1, 2006.

NLRB Report – Executive Secretary Barbosa spoke with Joe Baniszewski, Deputy Assistant General Counsel for the NLRB, this morning. He advised that the NLRB agents who worked last year in the Giumarra election found the experience both rewarding and educational. However, since the NLRB is now in a budget crunch, the NLRB simply cannot afford to cover their salaries while working on an ALRB election. The NLRB wants to be helpful and is willing to work with us. Analyst Barr will research the possibility of a Memorandum of Understanding and possible contract provisions.

7. Roundtable:

Regional Directors' Quarterly Meeting: The next Regional Directors' Quarterly Meeting will be held in Sacramento via telephone conference on Tuesday, August 29, 2006 at 10:00 a.m.

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The public meeting adjourned at 11:25 a.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.