

**STATE OF CALIFORNIA
AGRICULTURAL LABOR RELATIONS BOARD**

BOARD MEETING MINUTES

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

September 27, 2006

Time: 1:30 p.m.
Members Present: Chairwoman Raymundo, Members Shiroma and
Rivera-Hernandez
Members Absent: None.
Staff Present: Executive Secretary Barbosa, Counsel Wender and
Murray, Analyst Massie
Staff Absent: General Counsel Lee, Counsel Heyck
Others Present: None.

OPEN SESSION

- 1. Approval of Minutes:** The Board minutes for September 6, 2006 were approved 3-0.
- 2. Public Comments:** None
- 3. Chair Budget/General Counsel Report:** The Visalia Regional Office will be relocating to Suite R at 711 North Court Street on October 2, 2006.
- 4. Executive Officer Report:**

ELECTION REPORT

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

Giumarra Farms, Inc., 06-NA-48-VI

The UFW filed an NA on September 13, 2006. The petition was accepted for filing initially but following reconsideration was dismissed on September 19, 2006. On September 19, 2006, the UFW filed a request for review of that dismissal. On September 22, 2006 the Board issued its decision in 32 ALRB No. 4 overturning the Regional Director's decision to dismiss the notice of intent to take access and reinstating the NA. Since this decision, the UFW has now filed an NO with the office and has been taking worksite access in accordance with the previously filed NA.

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
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
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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 September 26, 2006. Replies, if any, are due October 6, 2006. On August 16, 2006 the Board issued an order remanding the case to the Investigative Hearing Examiner for reconsideration of his calculation of the potential effect on the outcome of the election from the number of votes he found to have been tainted by election misconduct. On August 17, 2006 the IHE issued a modified decision setting aside the election. On September 26, 2006 the employer filed exceptions to the IHE's recommended decision. Reply briefs are due October 6, 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
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 hearing in this matter has been scheduled for October 24, 2006 in Visalia, CA.

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 issued his challenged ballot report on September 5, 2006. Exceptions, if any, were due on September 15, 2006. No exceptions were filed. The Executive Secretary's office will be issuing an order making the Regional Director's Challenged Ballot Report final and directing that the ballots be processed as outlined in the 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 August 2, 2006 the employer and then the union filed objections to the election which are pending before the Executive Secretary on review. 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. On August 14, 2006 the Regional Director completed his investigation of the pending ULP and issued a complaint in this matter. On September

11, 2006 the Regional Director dismissed the decertification petition finding that employer threats made one day prior to the election created an atmosphere where it became impossible to conduct the election where employees could exercise their choice in a free and uncoerced manner. Any request for review was due September 21, 2006. No request for review was timely filed.

Vincent B. Zaninovich & Sons, 06-RC-2-VI

The UFW filed a representation petition on September 19, 2006 in the Visalia ALRB Regional Office seeking to organize the agricultural employees of Vincent B. Zaninovich & Sons (06-RC-2-VI). The employer is a grape grower with operations in Tulare and Kern Counties. The employer has approximately 1250 employees. An election has been scheduled for September 26, 2006.

COMPLAINT REPORTS

PREHEARING OR SETTLEMENT CONFERENCES SCHEDULED

None.

HEARINGS HELD:

None.

THREE CASES ON CALENDAR:

Artesia Dairy, 06-RC-1-VI

Hearing October 24, 2006

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

Hearing November 14, 2006

Hess Collection Winery, 01-CE-08-SAL

Pre-Hearing Conference November 2, 2006

Hearing January 16, 2007

ONE CASE PENDING ALJ/IHE DECISION:

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

Hearing closed June 16, 2006.

Post-hearing briefs due October 10, 2006.

ALJ/IHE DECISIONS ISSUED:

None.

CASE PENDING EXCEPTIONS OR REPLY:

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI
Replies due October 6, 2006.

CASES PENDING BOARD DECISION:

Giumarra Vineyards Corporation and Giumarra Farms, Inc., 05-RC-7-VI
Exceptions were filed September 26, 2006. Replies are due October 6, 2006.

CASES PENDING SETTLEMENT:

None.

CASES SETTLED OR RESOLVED:

Countryside Mushrooms, Inc., 06-CE-39-SAL

The regional director closed the case as all of the terms and conditions of the informal settlement agreement have been met.

COMPLIANCE CASES CLOSED:

None.

CASES TRANSFERRED TO BOARD FOR DECISION:

Boyd Branson Flowers, Inc., 93-CE-28-EC(OX)

Regional Director's Motion to Make Case Eligible for Pay Out from AERF.

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

Request for Review of IHE recommended decision.

BOARD DECISIONS:

Giumarra Farms, Inc., 06-NA-48-VI

32 ALRB No. 4 (September 22, 2006)

Board Decision re Dismissal of Notice of Intent to Take Access

Boyd Branson Flowers, Inc., 93-CE-28-EC(OX)

Regional Director's Motion to Make Case Eligible for Pay Out from AERF

Admin Order No. 2006-06 (September 25, 2006)

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. The petitioner filed a petition for review in the Supreme Court on August 10, 2006. The real party in interest filed its answer to the petition on August 31, 2006. The ALRB did not file an answer. The Supreme Court denied the petition for review on September 13, 2006. Pursuant to Rule 13, Hess has 90 days from September 13 to file with the U .S. Supreme Court. On September 22, 2006, the Union requested General Counsel take immediate action to enforce compliance.

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). 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. The petitioner filed a petition for review in the Supreme Court on August 10, 2006. The Supreme Court denied the petition for review on September 13,

2006. Pursuant to Rule 13, Hess has 90 days from September 13 to file with the U.S. Supreme Court. On September 22, 2006, the Union requested General Counsel take immediate action to enforce compliance.

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 was held on September 25, 2006 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. The record was filed with the court on August 16, 2006. On August 23, 2006 the petitioner filed an application for an order extending time to file petitioner's brief to December 14, 2006. The court granted the application on August 28, 2006.

6. Special:

Case Statistics Tracking System – Steve Guida is meeting with staff this week on changes to the case tracking system database and the website search engine.

Check Issuance Procedures to Expedite Distribution of backpay and payouts from the Agricultural Employee Relief Fund (AERF) – The Board voted 3-0 to approve a new Compliance Manual section that provides suggested procedures for the issuance and handling of checks paid to employees from back pay awards or from the AERF.

Response to E-mail Message from Howard Sagaser Concerning E Coli and Access – The Board approved a letter to be sent to Howard Sagaser informing him that if he wishes to propose that the Board amend the access regulations, he may file a petition pursuant to Government Code section 11340.6.

UC Research Fund for 2006-07 Conference – A draft letter to Professor Phil Martin supporting the conference was reviewed and approved by the Board.

Personnel (Senior Legal Typist) – One application for the part-time Senior Legal Typist position has been received.

7. Roundtable:

The ALRB Bilingual Implementation Plan is due October 1, 2006.

Member Rivera-Hernandez reported on the Budget Adjustment Seminar held this morning at the State Capitol.

The public meeting adjourned at 2:45 p.m.

WHEREUPON THE BOARD ENTERED INTO CLOSED SESSION.